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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~989~~ 99

LUCY C. FLAGLOR GAY, ARTHUR W. WINDETT, AND THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, APPELLANTS,

vs.

CATHARINE PARPART.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 18, 1879.

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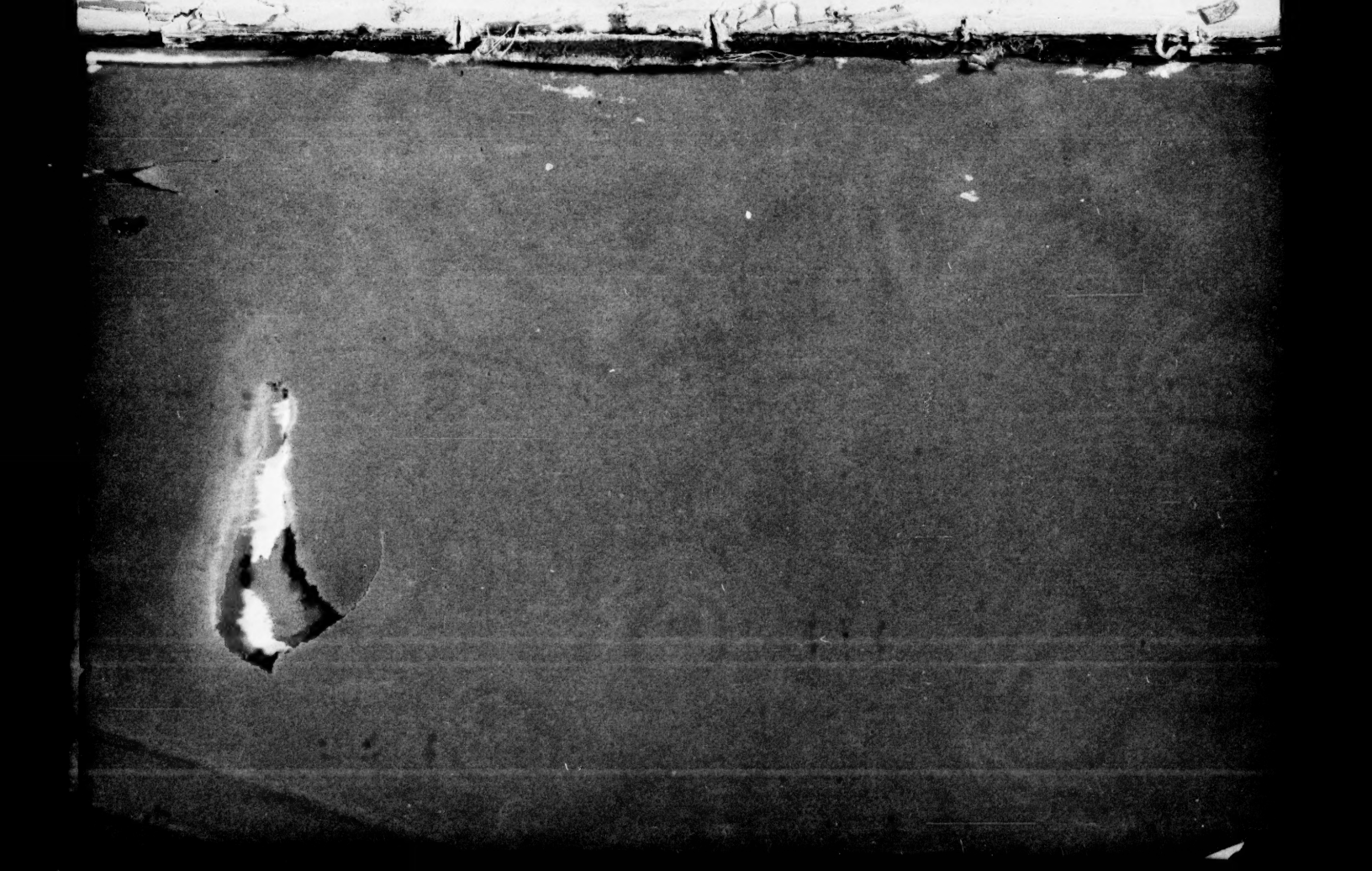
INDEX.

	Original.	Print.
Answer. See "Pleadings," *infra*.		
" of Godfrey Jessell to original bill	145	88
" " Same to amended bill	191	105
" " Catharine Parpart to same	266	159
" " Arthur W. Windett to cross-bill	420	241
" " Same to amended cross-bill	766	531
" " Same to supplemental cross-bill	837	602
" " Conn. M. Life Ins. Co. to cross-bill	450	266
" " Same to amended cross-bill	788	565
" " Same to supplemental cross-bill	845	607
" " Lucy C. Flaglor Gay to cross-bill	820	589
" " Same to amended cross-bill	820	589
" " Same to supplemental cross-bill	837	602
" " Wingrave Brandell et al. to amended and supplemental cross-bills	851	610
" " D. G. Hamilton to same	858	614
" " Guardian *ad litem* Morris (see "Partition proceedings" *infra*)	19, 889	14, 628
" " the Flaglors to the partition bill (see "Partition proceedings")	19, 888	14, 627
Addendum to deposition of James Crow, taken in 1868	612	434
Exhibit to same	609	433
Admission that deeds were duly recorded, etc.	135, 820	83, 589
" in regard to births and deaths	1394	888
Affidavit of George Herbert on motion to read proofs	808	582
Agreement contemporaneous with deeds of May 29th, 1851, by Crows, Garrett, and Flaglor, "Exhibit C,"	247, 589, 590	143, 411, 412
" "Exhibit B," of December, 1850, to James Crow's deposition	588	410
Assignment of bond and mortgage, Frederick T. Flaglor to Catherine Reid	257, 398, 1323	152, 229, 856



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Answer. See "Pleadings," *infra*.		
" of Godfrey Jessell to originai bill	145	88
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" " Conn. M. Life Ins. Co. to cross-bill	450	266
" " Same to amended cross-bill	788	565
" " Same to supplemental cross-bill	845	607
" " Lucy C. Flaglor Gay to cross-bill	820	589
" " Same to amended cross-bill	820	589
" " Same to supplemental cross-bill	837	602
" " Wingrave Brandell et al. to amended and supplemental cross-bills	851	610
" " D G. Hamilton to same	858	614
" " Guardian *ad litem* Morris (see "Partition proceedings" *infra*)	19, 889	14, 628
" " the Flaglors to the partition bill (see "Partition proceedings")	19, 888	14, 627
Addendum to deposition of James Crow, taken in 1868	612	434
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Admission that deeds were duly recorded, etc	135, 820	83, 589
" in regard to births and deaths	1394	888
Affidavit of George Herbert on motion to read proofs	808	582
Agreement contemporaneous with deeds of May 29th, 1851, by Crows, Garrett, and Flaglor, "Exhibit C,"	247,589,590	143,411,412
" "Exhibit B," of December, 1850, to James Crow's deposition	588	410
Assignment of bond and mortgage, Frederick T. Flaglor to Catherine Reid	257,398,1323	152,229,856

	Original.	Print.
Abstract of title, abridged, referred to in the deposition of John L. Thompson	1329	858
Attorney, letter of, Fred. T. and Letitia Flaglor to Charles D. Flaglor	593	415
" " Revocation of same	591	413
" " Same to Isaac N. Arnold	598	420
" " Charles D. Flaglor and wife to James Crow	590	412
Arnold, Isaac N., deposition and exhibits	502	319
Appeal prayed	1453	929
" Order for	1453	929
" Bond for	1456	930
"B." "Exhibit B," James Crow's deposition	588	410
Bill for Partition (see "Partition proceedings," *infra*)	9	4
" Review (see review, *infra*)	1300	844
" Hinman v. Garrett et al	17	12
Bill, Original (see pleadings, *infra*)	4	2
" Cross " " "	286	169
" Cross amended (see pleadings, *infra*)	746	514
" Cross amended supplement (see pleadings, *infra*)	824	591
Bond for costs in U. S. court	2	1
" " Removal of cause	444	263
" " Appeal	1455	929
" Charles D. Flaglor et al. to James Crow et al., exrs	601	423
" Charles D. Flaglor to Frederick T. Flaglor	1320	854
" Arthur W. Windett to Conn. Mut. Life Ins. Co	966	662
" Same to same	983	674
" Same et al. for appeal	1455	929
Births. Stipulation as to children of Charles D. Flaglor	1394	888
Blodgett, H. W., Judge, opinion in the cause	1394	888
"C." "Exhibit C" to James Crow's deposition	589	411
Crow, James, 1st deposition, taken in 1868.	526	345
" " exhibits to same	587	409
" " 2d deposition, taken in 1868, called "Addendum"	612	434
" " exhibits same	609	433
" " 3d deposition, taken 1879	1147	763
" " letters to Thomas George	402	231
" " " " Mrs. Letitia Flaglor	587	409
" " and Thomas G., deed, to Flaglors, May 29, 1851.	238	135
" " " same to Mrs. Garrett et al	237	134
" Thomas G., deposition	516	335
Certificate of evidence at hearing	869	619
" " marriage of F. T. Flaglor to Catherine Reid	398	229
Clerk's certificate	1462	933
Court, Cook County, record on proceedings to sell real estate.	233	128
" Circuit, record and proceedings on bill for partition (see partition)	9	4
" Circuit, record and proceedings on bill of review (see review)	1300	844
" Superior of Cook County, transcript from	2	1
" " " " opinion Jameson, Judge	1342	864
" Supreme of Illinois, opinion Flaglor v. Crow, 40 Ill., 414 (1866)	1021	696

		Original.	Print.
Court,	Supreme of Illinois, opinion, Gay v. Wadhams, Walker, J (1874). (In substance of record, *infra*, following page 787.)	1027	698
"	Supreme of Illinois, opinion, same case, Sheldon, J. (1875), 73 Ill., 415, *et seq*	298	177
"	Supreme of Illinois, opinion, same case, 83 Ill., 250, Breese, Judge (not copied)	1343	.....
"	Supreme of Illinois, opinion, *per curiam*—Gay v. Miller (Taylor case), 81 Ill., 718, in full, 8 Chicago Legal News, 290, and in affidavit of Geo. Herbert.	806	581
"	Supreme of Illinois, list of opinions of, read at hearing.	1341	864
"	Supreme of Illinois, transcript from, in Flaglor v. Crow.	871	619
"	Surrogate, Orange County, N. Y., containing petition and appointment of Charles D. Flaglor as guardian	260	153
Death of	Charles D. Flaglor, Dec. 23, 1858	1394	888
"	Augustus Garrett, Dec., 1848		
"	Eliza Garrett, Nov., 1855		
"	Mary Banks, before Nov., 1855		
"	Letitia Flaglor, Feb. 8, 1855		
"	Frederick T. Flaglor, Aug. 5, 1865		
"	all children of Charles D. Flaglor, except Elizabeth Flaglor, before the death of Charles D. Flaglor	1394	888
Deed.	Contemporaneous, interchangeable deeds, dividing Garrett's estate between Mrs. Garrett, Crows and Flaglors, dated May 29, 1851	237	134
"	Crows to Garrett, 29 May, 1851	237	134
"	Flaglors to Garrett, 29 May, 1851	238	135
"	Garrett to Crows, 29 May, 1851	240	137
"	Flaglors to Crows, 29 May, 1851	241	138
"	Garrett to Flaglors, 29 May, 1851	243	140
"	Crows to Flaglors, 29 May, 1851	244	141
"	Contemporaneous agreement of 29 May, 1851, "Exhibit C" to James Crow's deposition	247, 589	143, 411
"	Frederick T. Flaglor and Letitia Flaglor to Chas. D. Flaglor, Dec. 17, 1853	250	146
"	Chas. D. Flaglor to Frederick T. and Letitia Flaglor, Dec. 17, 1853	248	144
"	Frederick T. Flaglor to Charles D. Flaglor, Aug 19, 1857	252, 609	148, 433
"	Mortgage, Charles D. Flaglor to Frederick T. Flaglor, Aug. 19, 1857	253, 1316	148, 853
Deed,	Assignment of mortgage last mentioned, Frederick T. Flaglor to Catherine Reid (Parpart), dated Aug. 1st, 1873	257, 253 970, 316	152, 148 666, 185
"	Frederick T. Flaglor to Charles D. Flaglor, Jan. 17, 1858	255	150
"	H. and A. Keep to Arthur W. Windett	958	659
"	of Scott, com'r, to Lucy C. Flaglor Gay, subject to objection and exception	1003	687
"	Same to same, subject to objections ond exceptions	1006	689
"	Lucy C. Flaglor Gay to Arthur W. Windett, subject to objections and exceptions	1009	690

	Original.	Print.
Deed, Same to same, subject to objections and exceptions....	1016	694
" Release, Com. Mut. Life Ins. Co. to same.....	1306	848
" Mortgage, Arthur W. Windett to Conn. M. L. Ins. Co.	970	666
" Same to same.	990	679
" Warranty, Charles D. Flaglor to Hiram Joy, dated Feb'y 7, 1854.....	882	624
" " Same to Edmund Aiken, dated April 16, 1858	893	629
" " Same to Seth Wadhams, dated Aug. 18, 1854.....	897	631
" " Same et al. to Wadhams and Moses, dated Feb'y 17, 1853.....	902	633
" " Same and wife to Hiram P. Moses, dated Jan'y 18, 1854.....	910	637
Decree, Interlocutory for partition (1851).....	27, 603	22, 425
" Final " " (May 26, 1851).....	31, 607	26, 431
" In superior court, for restoration.....	128	80
" " " final by consent, Aug. 14, 1872.....	136	84
" In U. S. circuit court, final decree.....	1444	925
" In Circuit Court of Cook County, on bill of review, amending decree in partition proceedings of May 26, 1851; entered by Judge H. T. Dickey.....	1311	850
Demurrer to the rejoinder of Griffin Taylor (Miller case) in Supreme Court of Illinois.....	926	644
" to the rejoinder to 2d replication in same case in Supreme Court.....	933	647
Depositions for original complainant.		
" of Isaac N. Arnold and exhibits.....	502	319
" " John W. Brown.....	117	69
" " William D. Barnes.....	118	70
" " Simeon Bradley	120	72
" " B. W. Bradley.....	123	75
" " David N. Bradley.....	122	74
" " Thomas G. Crow	516	335
" " L. W. Edwards	119	71
" " Charlotte Flaglor	123½	76
" " Odell Gardner.....	124	77
" " John Link.....	486	2[illegible]
" " E. B. McCagg.....	519	3[illegible]
" " T. McCotter.....	523	3[illegible]
" " Daniel T. Weed	115	6.
Depositions for defendant on original bill.		
" of James Crow, taken 1868.....	526	345
Exhibits to same.....	587	409
" of same, taken 1868, called "Addendum".....	612	434
Exhibits to same.....	603	425
" of same, taken 1879.....	1147	763
Letters.....	1188	787
" of Judge Grant Goodrich	701	468
Exhibit to same.....	744	512
" of D. G. Hamilton	1094	733

	Original.	Print.
Depositions for defendant on original bill.		
" of George W. Lay	1396	891
Exhibits to same	1418	913
" of Catherine Parpart, defendant in original bill, complainant in cross-bill	336	194
Exhibits to same	398	229
" of Lawrence Proudfoot	1238	809
Exhibits to same	1287	837
" of Anson Sperry	1112	744
" of John L. Thompson	1049	710
Evidence. See "Deposition," "Testimony," "Oral Testimony," "Letters," "Exhibits," "Deeds," "Records."		
" Oral, of John Link	231	125
" " of Arthur W. Windett	232, 957	126, 651
" " of Anson Sperry	1043	707
" Order of Judge Drummond admitting	815	586
" Certificate of, at hearing	869, 1343	619, ...
Error, Proceedings on, in Supreme Court of Illinois.		
Writ of, filed February, 1866, in Flaglor v. Crow (reported 40 Ill., 414)	871	619
Containing,		
" Præcipe and suggestions, giving the names of the original parties and *terre tenants*	873	620
" Writ of error	877	622
" Return	879	623
" Amendments allowed	881	624
" Plea of Jessell, Moses, Wadhams, Engles, and Day *et als.* to same (Mrs. Parpart not party), incorporating title deeds of C. D. Flaglor to Aikin, Wadhams, and Moses, with covenants of warranty	886	626
" Warranty deed, Chas. D. Flaglor to Aikin	893	629
" " " Same to Wadhams	897	631
" " " Same to Moses and Wadhams	902	633
" " " Same to Hiram P. Moses	910	637
" " " Same to Hiram Joy	882	624
" Deraignment of title by Jessell, through Frederick, Letitia, and Charles D. Flaglor, to Charles D. Flaglor	915	639
" Averment that he is the lessee for years of Charles D	916	639
" Replications of Jessell, Wadhams, Moses, Engles, Day, et al	919, 944	641, 651
" Replications putting in issue the construction of the will of Augustus Garrett, on which rejoinders raised issues for the court	928,926,946	645,644,654
" Final order, reversing the decree of 1854, on bill of review	950	656
" Order remanding causes to circuit court for further proceedings	951	656
" The opinion of the Supreme Court in Flaglor v. Crow, as reported 40 Ill., 414	953, 1442	657, 924

	Original.	Print.
Exhibit "B." James Crow, deposition	588	410
" "C." " " "	589	411
" to " " "	587	409
" " " " 2d deposition, addendum	609	433
" " " " 3d deposition	1188	787
" " Judge Grant Goodrich, deposition	701	468
" " Geo. W. Lay, deposition	1396	891
" " Isaac N. Arnold, deposition	502	319
" " Catherine Parpart, deposition	336	194
" " Lawrence Proudfoot, deposition	1238	809
" " John Link, deposition	486	298
Flaglor, Elizabeth's will and letters testamentary	226	122
Garrett, Augustus' will	22	17
" Eliza's renunciation	26	21
Goodrich, Judge Grant, deposition	701	468
Gary, Judge, opinion, Gay v. Miller (Taylor case)	1345	874
Herbert, Geo., affidavit in support of motion to read testimony and exhibits, containing also *per curiam* opinion in the Miller case	808	582
Issues, on plea of release of errors, etc., in the Supreme Court, in Flaglor v. Crow, on error, putting in issue the construction of Garrett's will	927, 928, 946	644,645,654
Letters, Charles D. Flaglor to Letitia Flaglor, Oct 27	955	658
" Same to John Link	596, 597, 600	418,419,422
" John Link to Charles D. Flaglor	596, 597	418, 419
" James Crow to Letitia Flaglor	587, 588	409, 410
" Same to Thomas George	404	232
" Same to Frederick T. Flaglor	402, 403 409, 410 412, 413	232, 232 235, 235 236, 237
" Thomas George to James Crow	1189	787
" George W. Lay to Arthur W. Windett	1418, 1419	913, 914
" A. B. Belknap to Lawrence Proudfoot	1279	833
" List of letters produced at hearing	1198	792
" produced at hearing	1197	791
" of attorney. See "Attorney."		
" Testamentary on will of Elizabeth Flaglor	226, 227	122, 123
Link, John, deposition	486	298
" " oral testimony	231	125
Lay, George W., deposition	1396	891
Marriage certificate, Frederick T. Flaglor to Catherine Reid, dated ———	398	229
Mortgage, Charles D. Flaglor to Frederick T. Flaglor	253, 1316	148, 853
" Arthur W. Windett to Connecticut Mutual Life Insurance Company	970	666
" Same to same	990	679
" Assignment of mortgage and bond, Charles D. Flaglor to Frederick T. Flaglor, by Frederick T. Flaglor to Catherine Reid, dated Aug. 1st, 1863	253, 398, 1323	148,230,856
Motion to remand cause and order overruling same in circuit court, United States	480	295
" to read restored testimony and exhibits	806	581

	Original.	Print.
Oral testimony of John Link	231	125
" " " A. W. Windett	232, 957	126, 659
" " " Anson Sperry	1043	707
Orange County Surrogate's Record, containing petition of Charles D. Flaglor and his appointment as guardian of children	260	153
Opinion of Judge Lawrence, Flaglor v. Crow, 40 Ill., 414 (1866)	1021	696
" " Judge Jameson, Gay v. Wadhams (1872)	1342	864
" " Judge Gary, Gay v. Miller (Taylor case, 1873)	1345	874
" " Judge Walker, Wadhams v. Gay, (1874)	780, 1027	556, 699
" " Judge Sheldon, same case (1875), 73 Ill., 415, *et seq*	298	177
" " Judge Breese, same case, 83 Ill., 250 (not copied), 1876	——	.....
" " *Per curiam* in Gay v. Miller, (1875, Taylor case,) 81 Ill., 718, found in 8 Chi. Legal News, 190; copied at length, Herbert's affidavit	808	582
" " Judge Blodgett in this case in circuit court of U. S. (1879)	1420	915
" " List of, read and commented on at hearing	1341	864
Order, *pro confesso* against Catherine Reid (Parpart), James and Thomas G. Crow, in superior court, reciting non-residence of Catherine Parpart and publication of notice	128	80
" for restoration of records and files destroyed by fire, reciting the pleadings, proofs, etc	129	80
" Sundry, in Superior Court, Cook County, on demurrers, etc., etc	291, 297, 332, 335, 417	174, 177, 192, 194, 240
" Overruling motion to remand	481	295
" To amend cross-bill	483, 832	296, 599
" Allowing supplemental cross-bill	824	591
" Denying receiver	822	590
" Setting cause for hearing Oct. 5, 1878	864	616
" On the hearing	865, 868	617, 619
" *Pro confesso* v. Conn. Mut. Life Ins. Co	761	529
" Setting same aside January 17, 1878	761	529
" Giving leave to answer "on terms"	762	529
" Stipulation for further time, subject to like terms	763	530
" Judge Drummond's order of May 21, 1878, to read restored proofs and exhibits, etc., and dismissing cross-bill as to certain defts., etc	815	586
" Sundry orders of Supreme Court of Illinois	934	648
" Rules of the Supreme Court of Illinois regulating petition for rehearing, 53 Ills. Rep., XXVII	1289	838
Partition proceedings of 1851	9	4
" Bill, Garrett et al., filed March 3, 1851	9	4
" Affidavit of non-residence	17	12
" Summons	16	11
" Petition of D. B. Hinman to be party	17	13
" Proceedings on same	17	13
" Publication of notice, etc	18	14

	Original.	Print.
Partition proceedings of 1851.		
" Answer of the Flaglors	19	14
" Order appointing guardian *ad litem*	19	14
" Answer of same	19	14
" Order referring to master (Judge Skinner)	20	15
" Judge Skinner's master's report	20	15
" Will of Augustus Garrett	22	17
" Renunciation of Elizabeth Garrett, widow	26	21
" Interlocutory decree appointing commissioners	27	22
" Report of commissioners	20, 605	16, 428
" Final decree, entered May 26th, 1851	31, 607	26, 431
Plea, of Taylor, Norton, Engles, Wadhams, Day, Jessell, et al. on writ of error in Flaglor v. Crow, in Supreme Court of Illinois, with replication, etc., putting in issue the construction of the Garrett will	881, 927 928, 946	624, 644 645, 654
" containing warranty deeds, Charles D. Flaglor to Aikin.	893	629
" to Wadhams; to Wadhams and Moses	897	631
" to Moses and H. Joy	382, 910, 915	221,637,639
Pleadings in general bill and cross-bill in Superior Court of Cook County and U. S. Circuit Court for Northern District of Illinois.		
Placita, U. S. Cir. court	1	1
Filing transcript	2	1
Placita in Superior Court, Cook Co	3	2
Original bill of Elizabeth Flaglor	4	2
Suggestion of death of Elizabeth Flaglor	49	34
Bill of revivor and supplement of Lucy C. Flaglor, as the heir-at-law or devisee of Elizabeth	46	33
Answer of Godfrey Jessel to original bill	145	88
Amended bill of Lucy C. Flaglor	51	35
Answer of Jessel to amended bill	191	105
Order restoring record, pleadings, and evidence after destruction by fire	129	80
Proof of publication and order *pro confesso* against Catherine Reid as a non-resident, and *pro confesso* v. the Crows	128	80
Decree, final, br consent of Jessel, Aug. 14, 1872	136	84
Petition of Catherine Reid (Parpart) to open decree and to file answer, filed July 18, 1873	263	158
Order giving leave to answer, July 18, 1873	263	158
Answer of Catherine Parpart, filed Oct. 6, 1873	266	159
Cross-bill of same, filed February 1, 1875	286	159
Summons and sundry orders	291, 332 835, 850	174, 192 601, 610
Answer of A. W. Windett to cross-bill, filed September 30, 1873	420	241
Petition of Conn. Mut. Life Ins. Co. to remove cause, filed October 4, 1875	440	261
Bond filed with same	444	263
Pleadings, etc.		
Order for removal	448, 449	265, 266
Motion to remand and order overruling same	480	295

	Original.	Print.
Pleadings, etc.		
Answer of Conn. Mut. Life Ins. Co. to cross-bill, filed December 20, 1875	450	266
Orders, see "Orders"	483, 822 824, 833 761, 762 764, 815 865	297, 590 591, 600 529, 529 530, 586 617
Stipulations as to omission of evidence and exhibits in transcript	483	296
Amended cross-bill	746	514
Answer of Conn. Mut. Life Ins. Co. to same	788, 804	565, 581
" " A. W. Windett and Mrs. Gay et als. to same	805	581
Supplemental cross-bill	824	591
Amendment to same	833	600
Answer of A. W. Windett to same	837	602
" " Conn. Mut. Life Ins. Co. to same	845	607
" " Wingrave et als. to same	851, 855	610, 612
" " Conn. Mut. Life Ins. Co. to same	855	612
" " D. G. Hamilton to same	858	614
" " Chas. Brandell et als. to same	863	616
Decree, final, in U. S. Cir. court	1442	924
Opinion of Judge Blodgett	1420	915
Parpart, Catherine, deposition	336	194
Proudfoot, Lawrence, deposition	1238	809
" certificate of	1237	809
Receipts, "A" to "H," exhibits to John Link's deposition	486	298
" for taxes paid by Fred. T. Flaglor	413	237
Records, Cir. Court Cook Co. See "Partition Proceedings" (1851)	9	4
" Cir. Court Cook County. See Review Proceedings (1853–4)	1299	843
" Superior Court Cook Co., on original and cross-bills herein, down to renewal of cases, 1867, 1876,	1449	925
" Superior Court Cook Co., addenda to same by stipulation	483, 486	296, 298
" Superior Court Cook Co., "Addendum" to same by stipulation, October, 1878, Lay's depositions and exhibits	1396	891
" Superior Court Cook Co., in Gay v. Wadhams, showing date of order on petition for rehearing in July, 1874, and proceedings thereon staying cause	1290	838
Record of Supreme Court of Illinois, on writ of error, Flaglor v. Crow. See "Error"	871	619
" Supreme Court on 1st appeal, Wadhams v. Gay, and rehearing, &c	1290	838
" Surrogate Court, Orange County, N. Y., on pet. C. D. Flaglor for guardianship	260	153
" County Court of Cook County, Ill, on probate, Augustus Garrett's will	26	21
" Same, on probate, Elizabeth Flaglor's will	226	122

*

		Original.	Ptint.
Record of same,	petition of executors of Augustus Garrett's estate to sell real estate	233	128
"	Transcript of, from Superior Court of Cook County.	3–449	2–266
"	" from Circuit Court, U. S., Northern District of Illinois	1–1463	1–933
Rehearing.	General rules relating to, in Supreme Court of Illinois, 55 Ill. Rep., XXVII.	1289	838
"	Order Supreme Court of Ills., staying proceedings in Gay v. Wadhams, on petition of Wadhams et al	1290	838
"	Final order thereon, granting same and remanding cause	1295	841
"	Order of Supreme Court of Ills., staying proceedings, same case, on petition of Gay, compl't...	1296	842
"	Order on same, overruling petition and remanding cause	1297	842
"	Certificate on same	1298	843
Release.	Frederick T. Flaglor to Charles D. Flaglor, dated Jan'y 17, 1858, of part of mortgaged property..	255	150
"	Conn. Mut. Life Ins. Co. to A. W. Windett, of part of property mortgaged	1336	862
Rejoinder in	Flaglor v. Crow, in Supreme Court of Ills., putting in issue the construction of the will of Augustus Garrett	926,933,946	644,647,654
Replications.	Flaglor v. Crow, in Supreme Court of Ills, putting in issue the construction of the will of Augustus Garrett, &c	919, 944	641, 651
"	Of Lucy C. Flaglor Gay to Catherine Parpart's answer to original bill	334, 335	193, 164
"	Stipulation that to all answers replications were duly filed and need not be copied	1458	931
Removal,	Petitions for, of this cause	440	261
"	Bond for	444	263
"	Order for	448	265
"	Certificate of clerk for	449	266
"	Motion to remand	480	295
"	Order overruliug same, and agreement of parties to the jurisdiction	481	295
Review,	Proceedings on bill of, filed in Cir. Court Cook County, April, 1853.		
"	Bill of	1300	844
"	Summons	1305	847
"	Affidavit of non-residence	1303	845
"	Certificate of publication	1306	848
"	Guardian *ad litem* appointed	1308	849
"	Answer of guardian *ad litem*	1309	849
"	Final decree by Hon. H. T. Dickey on bill of review, reforming decree of 1851 in partition	1311	850
"	Certificate	1312	850
"	Writ of error and proceedings thereon in the Supreme Court of Illinois, on "error," *supra* in Flaglor v. Crow	871	619

	Original.	Print.
Review, Order reversing decree Cir. Court of Cook County...	950	656
" Order remanding same for further proceedings to the Circuit Court of Cook County.....	951	656
" Opinion of Supreme Court of Ill., 40 Ill., 414.....	953, 1021	657, 696
" Order of restoration, redocketing the same on restoration of mandate.....	1312	850
" Order dismissing same.....	1313	851
" Petition to restore record and motion to file certified copy	1313	851
" Order giving Catherine Parpart leave to restore record, and restoration.....	1315	852
" Order giving same leave to intervene by filing bill in nature of a bill of revivor, and supplement showing bill filed, and pendency of bill of review, October, 1879	1315	852
Stipulation as to deeds of May 29, 1851, and agreement of that date.....	237	134
" as to omissions from the transcript from the Superior Court of Cook County...	483, 1456	296, 930
" as to George W. Lay, deposition.....	1394	888
" as to births and deaths.....	1394	888
Sperry, Anson, deposition.....	1112	743
" " oral testimony.....	1043	707
Thompson, John L., deposition.....	1049	710
Testimony, oral 231,	957, 1043	125, 659, 707
Valuation of real estate, exhibit to the deposition of Judge Grant Goodrich.....	228, 744	123, 512
Will of Augustus Garrett.....	22	17
" Elizabeth Flaglor.....	226	122
Windett, Arthur W., oral testimony.....	232, 957	127, 659
" " " cross-examination of.	1037	704

1 Pleas in the Circuit Court of the United States of America for the Northern District of Illinois, held at the United States court rooms in the city of Chicago, in the district aforesaid, before the Hon. John M. Harlan, one of the Justices of the Supreme Court of the United States; the Hon. Thomas Drummond, Circuit Judge of the United States for the Seventh Judicial Circuit, and the Hon. Henry W. Blodgett, District Judge of the United States for said Northern District of Illinois, on Monday, the twenty-eighth day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and seventy-nine, and of the independence of the United States the one hundredth and fourth year.

WILLIAM H. BRADLEY, *Clerk.*

LUCY C. FLAGLOR GAY	
Gen. No. 13,161. *vs.*	In Chancery.
GODFREY JESSEL, CATHERINE REID, JOSEPH H. Mather, Theodore H. Curtis, James Crow, and Thomas G. Crow.	Original bill.
and	
CATHERINE PARPART AND LOUIS PARPART	
vs.	Cross-bill.
ARTHUR W. WINDETT, THE CONNECTICUT MUTUAL Life Insurance Company, Lucy C. Flaglor Gay, George Gay, Charles Brandel, John Wingrave, Jr., and H. G. H. Hahlbrook.	
and	
CATHERINE PARPART AND LOUIS PARPART	
2 *vs.*	Supplemental Cross-bill.
LUCY C. FLAGLOR GAY, GEORGE GAY, ARTHUR W. Windett, The Connecticut Mutual Life Insurance Company, Louis Blohm, and David G. Hamilton.	

NORTHERN DISTRICT OF ILLINOIS, *sct.*

Be it remembered that on the twentieth day of December, in the year of our Lord one thousand eight hundred and seventy-five, there was filed in the office of the clerk of the Circuit Court of the United States for the Northern District of Illinois, at Chicago, in said district, a transcript of record from the Superior Court of of Cook County, in the State of Illinois, and also a bond for costs in said entitled cause. Which said bond and transcript are respectively in the words and figures following, to wit:

Bond for Costs.

UNITED STATES OF AMERICA, } *ss.*
NORTHERN DISTRICT OF ILLINOIS. }

Circuit Court, December Term, A. D. 1875.

LUCY C. FLAGLOR ET AL.
vs.
GODFREY JESSEL ET AL.
and
CATHERINE PARPART, LATE, &C., ET AL.,
vs.
A. W. WINDETT ET AL.
} In Chancery.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in
3 this action, or to any of the officers of this court, and in default of payment by the Connecticut Mutual Life Insurance Company, one of the defendants in this cause, of any costs ordered or adjudged to be paid by it, I hereby agree and stipulate that execution may issue against my property for any costs taxed against it. Dated this eighteenth day of December, A. D. 1875.

ROBERT T. LINCOLN.

(Endorsed:) Filed Dec. 20th, A. D. 1875. Wm. H. Bradley, clerk.

Transcript.

United States of America.

STATE OF ILLINOIS, } *ss.*
COUNTY OF COOK. }

Pleas before the honorable the judges of the Superior Court of Cook County, in the State of Illinois, at a regular term of said Superior Court of Cook County, begun and holden at the court-house, in the city of Chicago, in said county and state, on the first Monday, being the ——— day of ——— in the year of our Lord one thousand eight hundred and seventy ———, and of the independence of the United States of America the ninety ———.

Present, the Honorable Joseph E. Gary, chief justice of the Superior Court of Cook County; John A. Jameson and Samuel M. Moore, judges; Charles H. Reed, prosecuting attorney; T. M. Bradley, sheriff of Cook County.

Attest: ALEXANDER F. STEVENSON, *Clerk.*

4 Be it remembered that heretofore, to wit, on the eleventh day of May, in the year of our Lord one thousand eight hundred and seventy-two, the same being one of the days of the May term of the Superior Court of Cook County, the following, among other proceedings, were had in said court and entered of record, to wit:

ELIZABETH FLAGLOR, BY JOHN LINK, HER NEXT FRIEND,
vs.
GODFREY A. JESSEL ET AL.
} Bill.

This day comes the complainant hereto by A. W. Windett, her solicitor, on whose motion, based on affidavit filed, of the loss of the original papers filed in this cause, leave is given the said complainant by the court to file a substantial copy of said in lieu of the one destroyed by fire.

And thereupon, to wit, on the same day and year last aforesaid, to wit, May 11, 1872, the said complainant by Arthur W. Windett,

her solicitor, filed in the office of the clerk of said court, her certain copy of bill of review and amended bill of complaint, and certain depositions which are in words and figures following, to wit:

To the honorable the judges of the Superior Court of Chicago in chancery sitting:

5 Humbly complaining, showeth unto your honors, your oratrix, Elizabeth Flaglor, an infant, who sues by John Link, her next friend. That some time in the month of December, A. D. 1848, Augustus Garrett, late of Cook County, Illinois, departed this life, seized in fee of certain extensive real estate hereinafter more particularly described, leaving no child or descendants of such alive, but leaving a widow, one Eliza Garrett, since deceased and testate, leaving a will duly executed, disposing of and devising his entire estate, both real and personal. That said will was, on the 26th day of February, A. D. 1849, admitted to probate in the office and court of the probate justice of said Cook County, a copy of which said will is contained in the record of proceedings hereinafter set forth and made part of this bill of complaint.

That some time after probate of the said will was made, to wit, in the early part of the year 1851, an agreement and arrangement for the partition of said estate was made and entered into by said Eliza Garrett, James Crow, and Thomas G. Crow, the executors of said will, of the one part, and Letitia Flaglor and Charles D. Flaglor, named in said will, and Frederick T. Flaglor, husband of the said Letitia, of the other part, which agreement is set forth and recited in the bill of complaint for partition filed by the said Eliza Garrett and James and Thomas G. Crow, the answer of said Letitia, Charles D. and Frederick T. Flaglor, and in the proceedings, orders, and final decree of the Circuit Court of Cook County

6 aforesaid, thereupon had, made, and entered of record, as hereinafter is more fully shown.

And more particularly your oratrix showeth unto your honors, that it was then and there agreed by and between the said Eliza Garrett, James Crow, and Thomas G. Crow, of the one part, and said Letitia, Frederick T , her husband, and Charles D. Flaglor, of the other part, that one-half of the entire estate should be allotted and set apart to the said Eliza Garrett in fee simple, and of the other half, two-thirds should be set apart and allotted to said James and Thomas G. Crow in fee simple, and the remaining third should be allotted and set apart to said Letitia Flaglor for the term of her life; remainder for the term of his life to said Charles D. Flaglor; remainder to his child or children who should survive him, for want of such, remainder in fee simple to the said James and Thomas G. Crow, being the same partition allotment and division of estates and interests among the devisees thereof named in the said will, and thereby directed to be made, except as to the time of making said division, and that instead of an annuity for life, only one-half of the estate was thereby given to said Eliza Garrett absolutely in fee. and that instead of an annuity for the term of her life, an estate for the term of her life was thereby given to *to* said

Letitia Flaglor in the one-sixth of said estate, to be set apart to the Flaglors in succession; and also that said Charles
7 D. Flaglor, instead of a contingent interest, should have a life estate next in remainder after said Letitia, vested in him, ready to come into possession upon the termination of the life estate of said Letitia Flaglor.

That afterwards, in pursuance of, and intended execution of, said agreement and arrangement, the said Eliza Garrett, James Crow, and Thomas G. Crow, on the 3d of March, A. D. 1851, filed their bill of complaint in the Cook County Circuit Court, setting forth the facts and circumstances which made partition of said estate necessary and expedient, and more particularly setting forth the agreement and arrangement so as aforesaid made and entered into between said parties for a partition, and praying said court to adopt, ratify, and sanction said agreement, and to carry the same into effect by the final order and decree of said court, which said bill of complaint is part of the record in said cause hereinafter contained, making defendants to said bill of complaint, said Letitia Flaglor, Frederick T., her husband, Charles D. Flaglor, and also Lucy Louisa Flaglor, then an infant child of said Charles D. Flaglor, of tender years, and since deceased, and your oratrix, who is the only child of said Charles D. Flaglor who survived him, as parties to said bill. And your oratrix states that said Letitia, Charles D., and Frederick T. Flaglor, having been duly served with process, appeared and filed their joint answer to said bill, admitting all and singu-
8 lar the allegations of said bill of complaint to be true as therein stated, and consenting and expressly praying that the specific partition and allotment of interest, as prayed for and contained in said bill, should be made, which answer is contained in the record of said proceeding had in said cause hereinafter set forth.

And your oratrix further states that due service of process was made upon the said Lucy Louisa and your oratrix, and that a guardian ad litem for them was appointed, by the said court, to protect their interests, who filed an answer for them, submitting their just rights to the protection of said court as in and by said record, before referred to, will more fully appear.

That afterwards thereupon the following proceedings, orders, and decrees in said cause were had, made, and entered of record by the said court, and that the following is a full copy of the record in said cause, containing the said bill, answers, orders, proceedings, and decrees of the said court in said cause, which, for greater certainty, your oratrix sets forth at length in the body of this her bill of complaint:

9 "To the honorable the judge of the Cook County Circuit Court, in chancery sitting:

"Your petitioners, Eliza Garrett, widow of Augustus Garrett, deceased, and James Crow, and Thomas G. Crow, devisees of said Augustus Garrett, deceased, would represent unto your honor, that the said Augustus Garrett died in the city of Chicago, county of Cook, and State of Illinois, in or about the month of December, A. D. 1848, seized, as far as they have been able to discover of the following real estate:

A

"DESCRIPTION OF REAL ESTATE SET OFF TO MRS. ELIZA GARRETT.

"Lots number three (3) and four (4), in block number thirty-one (31), in the Original Town of Chicago. Also the west half of the east half and the east half of the west half of lot number seven (7), in block thirty-one (31), in the Original Town of Chicago. Also, lots number one (1), two (2), three (3), and five (5) of
9 Campbell's Sub-division of lot No. eight (8), in block number nineteen (19), Original Town of Chicago. Also, lot number seven (7), and fractional lot number two (2), in block number twenty-one (21), including that part of the original alley lying between said lot seven (7) and fractional lot two (2), in said block number number twenty-one (21), O. T. C. Also, that part of lot No. five (5), in block No. twenty (20), in the Original Town of Chicago, commencing at a point ninety (90) feet from the corner of Lake and Franklin streets, running thence north on a line with Franklin street thirty-four (34) feet, thence east eighty (80) feet, thence south thirty-four (34) feet, thence west eighty (80) feet to the place of beginning. Also, that part of township No. thirty-nine (39), section No. twenty-two (22), north range fourteen (14) east of the third principal meridian, fronting on State street two hundred and sixty-seven (267) feet, lying between the lands owned by Susannah Drake on the north and James D. Sherman on the south, and
10 running east to Wabash Avenue, and two hundred and sixty-seven (267) feet fronting on Wabash Avenue, lying between the said tracts of land owned by Susannah Drake on the north and James D. Sherman on the south, and running east to the lands deeded by Augustus Garrett, deceased, to R. W. Patterson and Ira M. Weed, and two hundred and sixty-seven (267) feet fronting on Michigan Avenue, between the said land owned by Susannah Drake on the north and James D. Sherman on the south, and running east to Lake Michigan, and 20 feet front on Franklin street off the south end of lot 1 in block 31, in the original town.—*Schedule*, A."

B.

"A DESCRIPTION OF THE REAL ESTATE SET OFF TO JAMES CROW AND THOMAS G. CROW.

"Lot No. one (1), in block No. thirty-one (31), in the Original Town of Chicago, excepting 20 feet front on Franklin street, off the south end of said lot. Also, the west half of lot No. six (6),
11 in block No. twenty-one (21) in the Original Town of Chicago. Also, the east half of the west half of lot No. eight (8), in block No. twenty-one (21), in the Original Town of Chicago. Also, the east half and the east half of the west half of fractional lot No. one (1), in block No. twenty-one (21), in the Original Town of Chicago, including all that part of the original alley (now vacated) lying in the rear of the said east half and east half of the west half of

said fractional lot No. one (1), in said block twenty-one (21), O. T. C. Also, that part of lot No. one (1), in block No. seventeen (17), Original Town of Chicago, commencing at the north east corner of said lot one (1), and running thence south on a line with Dearborn street fifty (50) feet, thence west forty-four (44) feet, thence north fifty (50) feet, thence east on a line with South Water street forty-four (44) feet to the place of beginning. Also, the east forty-four (44) feet of wharfing lot No. five (5), Original Town of Chicago. Also, lots No. eleven (11), and No. fifteen (15), in
12 Wabansia Addition to Chicago. Also, lots No. fifteen (15), and sixteen (16), in block No. thirteen (13), in Fort Dearborn Addition to Chicago. Also, that part of lot No. fourteen (14) in block No. thirteen (13), in Fort Dearborn, commencing at the south west corner of said lot No. fourteen (14), running thence north on a line with State street twenty (20) feet, thence east one hundred and fifty (150) feet, thence south twenty (20) feet, thence west one hundred and fifty (150) feet to the place of beginning, and that part of said lot No. fourteen (14), in said block No. 13, Fort Dearborn Addition, commencing at the north west corner of said lot 14 and running thence south on a line with State street eight (8) feet, thence east one hundred and fifty (150) feet, thence north eight (8) feet, thence west one hundred and fifty (150)
13 feet to the place of beginning. Also, that part of lots No. one (1) and two (2), in block No. one hundred and forty (140), in School Section Addition, commencing twenty feet and seven inches (20 7-12) from the corner of State and Adams streets, running thence south on State street twenty and seven inches (20 7-12) thence west seventy-five (75) feet, thence north twenty feet and seven inches (20 7-12), thence east seventy feet to the place of beginning, and an alley commencing 71 feet from the corner of State and Adams streets, running south 20 7-12 feet, thence west four (4) feet, thence north 20 7-12 feet, thence east four feet to the place of beginning.—*Schedule* 'B.'

C.

"A DESCRIPTION OF REAL ESTATE SET OFF TO LETITIA FLAGLOR AND CHARLES D. FLAGLOR AND CHILDREN.

"The north half of block number seventy-three (73), in School Section Addition to Chicago. Also, the west quarter of lot number eight (8) and the west quarter of fractional lot number one (1) in block number twenty-one (21) in the original town now city of
14 Chicago, including that part of the original alley between said west quarter of lot No. eight (8) and the said west quarter of fractional lot No. (1) in said block No. twenty-one (21), O. T. C. Also, the west half of the east half of lot number two (2), in block number thirty-one (31), in the Original Town of Chicago. Also, that part of lot number one (1,, in block number eighteen (18), in the Original Town of Chicago, commencing twenty-two (22) feet from the

corner of Clark and South Water street, running thence west on a line with South Water street twenty (20) feet, thence south seventy (70) feet, thence east twenty (20) feet, thence north seventy (70) feet to the place of beginning. Also, lot number twenty-five (25), in block No. nine (9), in Fort Dearborn Addition to Chicago. Also, that part of lot number fourteen (14), in block number thir-
15 teen (13), in Fort Dearborn Addition to Chicago, commencing at a point on State street twenty (20) feet north of the south west corner of said lot No. fourteen (14) running thence north on a line with State street, twenty (20) feet, thence east to the alley one hundred and fifty (150) feet, thence south twenty (20) feet, thence west one hundred and fifty (150) feet to the place of beginning. *Schedule* 'C'.

"And your petitioners further represent, that afterwards, to-wit, on or about the 23d day of February, A. D. 1849, at a term of the Cook County Court, said Will was presented to the Judge of said court, in said court proved in accordance with the law in such case made and provided, one of the witnesses thereto being the then Probate Justice of the peace in and for said county, and on or about the 26th day of February, A. D. 1849, was admitted to pro-
16 bate in the Probate Court of said county of Cook, as will more fully appear by reference to the records of said courts.

"And your petitioners further represent, that afterwards, to-wit., on or about the said 26th day of February, 1849, the said Eliza Garrett, James Crow and Thomas G. Crow, who were by said Will named and constituted executrix and executors of said Will, were duly qualified, and entered upon the execution thereof, to which said Will reference is hereby had for its terms, and the facts and things therein appearing, for certainty of the contents thereof, a copy of which is herewith filed, marked 'Schedule D,' which is made part of this petition. And your petitioners further represent that said Augustus Garrett died leaving no heirs of his body, or descendants of such heirs, and that in pursuance of the statute in such cases made and provided, and the rights and privileges by
17 law in her vested, the said Eliza Garrett, widow of the said Augustus Garrett, did afterwards, to-wit, on or about the fifteenth day of October, A. D. 1849, execute, and on the 10th day of November, 1849, acknowledge a renunciation of all bequests to her in said Will of the said deceased husband made, and all rights under the same, and made known her intention to take her dower in the lands of her deceased husband and the rights in such case to her given by the statute in such case made and provided, which said renunciation was on or about the day last aforesaid filed in the probate office of the county of Cook aforesaid, and to which reference is had for substance and certainty, a copy of which is herewith filed, marked 'Schedule E,' and made part of this petition.

"And your petitioners further represent, that from the rents,

issues and profits of said estate, debts due the same, and funds from
18 said estate to them coming, they have paid funeral charges and other expenses, and of interest and debts, taxes, costs, and other liabilities of said estate, and arising in the management thereof, the sum of about twenty-three thousand one hundred and seventy dollars and sixty cents, and they say that, as near as they are able to determine, the debts and liabilities of said estate at the time of the decease of said Augustus Garrett, amounted to the sum of about thirty-two thousand and five hundred dollars.

"And your petitioners further state, that there is still due for original debts and on mortgages by them made to raise money for pressing necessities, as near as they can ascertain from said estate
19 about the sum of sixteen thousand five hundred and eighty dollars, together with some expenses and other dues not at present definitely known, but supposed not to exceed one thousand dollars.

"And your petititioners further represent, that the said Eliza being anxious to have her share in said real estate above described set off and assigned to her, and the said James and Thomas G. Crow being also desirous of a fair and equitable division of said real estate according to their respective interests and rights therein, and the said Letitia Flaglor, Frederick T. Flaglor, her husband, and Charles D. Flaglor, all in said Will named, having also signified their desire for such division, and that their interest therein might be separated and set apart from and out of said real estate, they, said Letitia, Frederick T., her husband, and Charles D. Flaglor, some time heretofore joined with your petitioner and chose William H. Brown, William Jones, and James H. Rees to
20 appraise and value all and each portion of said real estate of which there was any knowledge, except that which was specifically bequeathed by said Augustus Garrett in and by said Will to John Link and Augustus Garrett Seaman, and also except a small portion of real estate which had before that time been ordered by the Cook County Circuit Court to be sold for and towards the payment of debts due from said estate, which appraisal and valuation said appraisers so chosen proceeded to make and did make, to the satisfaction of said parties, and which your petitioners aver to have been fair and equitable in their judgment.

"And your petitioners aver, that there have been born unto the said Charles D. Flaglor two legitimate children, now living, as they have been informed, Elizabeth Flaglor and Lucy Louisa Flaglor, both infants and under the age of twenty-one years, which they charge to be and are the only children or descendants of children of said Charles D. Flaglor, now living, and whom these petitioners pray may be made defendants in this petition, together with said Letitia Flaglor, Frederick Flaglor, Charles D. Flaglor, and Mary Banks.

21 "And your petitioners aver, that after the said appraisal and valu-

ation the said Eliza Garrett, James Crow and Thomas G. Crow, the said Letitia D. Flaglor, Frederick T. Flaglor, her husband, and Charles D. Flaglor, her son, agreed upon the following division of said real estate as a fair and equitable division of said real estate according to their respective rights therein, and the rights of the children of said Charles D. Flaglor, if he should die leaving any; to wit:

"FIRST. That the share and portion of said estate to which said Eliza Garrett should have and be entitled to and as of the full value of one-half of the above described real estate, was and is that above described preceding the words 'Schedule A,' but to be subject to the payment of one-half the debts and claims due or to become due
22 from said estate which may remain and be unpaid out of the moneys and personal property belonging and coming to said estate or other resources thereof.

"SECOND. That said Thomas G. and James Crow should have and take as their fair and equitable share of said estate, and as yielding and producing two-sixths of the income of said above described land, the land described next previous to the words 'Schedule B,' and next after the words 'Schedule A,' subject to the payment of two-sixths of all the debts and liabilities of said estate, also two-thirds of the legacies in said Will mentioned, and the whole of the annuity to said Mary Banks by said Will granted, and out of said property payable, which upon such division they agreed to assume.

"THIRD. That to said Letitia Flaglor should be set apart the property and real estate heretofore described and next after the words 'Schedule B,' and next before the words 'Schedule C.' as
23 adequate to produce one-sixth part of the income of all said real estate, and by the terms of said Will to be paid and going to said Letitia during her life, and to said Charles D. Flaglor if he should survive said Letitia during his life, and as the fair proportion to be set off to any children of said Charles D., who might by the terms of said Will survive him, according to the conditions of said Will, but to be subject to the payment of one-sixth part of the debts due and to become due from said estate. Also, one-third of the legacies in said Will mentioned and designated.

"And your petitioners would further represent, that since the decease of said Augustus Garrett a large number of buildings then standing on said estate and producing a large income and rent, have
24 since been burned down and destroyed, and the income of said estate greatly lessened, and said property from which said buildings have been so burned mostly now lies unproductive, and cannot be rented to any reasonable advantage, and that by the terms of said Will said executors have no power to borrow money to improve such real estate. And that from the fact of so much of the same lying vacant and unproductive the rents on other and adjoining property are greatly lessened. And that said estate for the want of improvements

is fast going to decay and waste, and being eaten up with taxes and other expenses. And as the said Eliza Garrett and the said legatees in said Will mentioned, are unable and unprepared to improve said property out of their own funds and could not in fact in any equi-
25 table way do so and preserve the just rights of all your petitioners, and said Letitia, Frederick T., her husband, and Charles D. Flaglor have, induced by the consideration aforesaid and with the hope of preserving said estate and rendering the same productive, agreed upon the foregoing division of the same, and pray that this Honorable Court may adopt the said division of the estate as above agreed upon, may decree that there be set off to the said Eliza Garrett, as the share of said real estate to which she by law is entitled, subject to the payment of one-half of the debts and claims against said estate due or to become due as her absolute property and in lieu of her dower in said real estate, according to the statute in such case made and provided, the real estate and property above next preceding the words 'Schedule A.' And that this Court will decree
26 to be set off to the said James Crow and Thomas G. Crow as and in full of all their and either of their shares and rights, and their heirs and assigns under and by virtue of said Will, of, to and in the real estate above described, except and reserving to them, their heirs and assigns, any right of reversion they may have, or either of them, in the part of said estate hereinafter prayed to be set off to said Flaglor in case of the death of said Charles D. Flaglor leaving no legitimate child or children, the property and real estate hereinbefore described next after the words 'Schedule A,' and next before the words 'Schedule B,' as their fair portion of said estate to which they are now entitled, to the title to or income in and to which they will become entitled on the death of said Mary Banks as yielding and bringing now two-sixths of the income of said estate, but to be subject to and charged with the payment to said Mary Banks of all
27 moneys, annuities and claims upon said estate, and any part thereof now existing, or which may hereafter accrue to her under the terms and provisions of said Will, and subject further to the charge and payment of two sixths of all debts and claims against said estate due and to become due, and subject further to the payment of two-thirds of the bequests in said will given and provided.

"And that this Honorable Court set apart the real estate above described next after the words 'Schedule B,' and next before the words 'Schedule C,' in the general description of the property of said estate above described, as of the fair one-sixth part in value and income of said real estate of Augustus Garrett, deceased, and above described, as the share and portion of said real estate, to be charged with and to pay the income bequeathed
28 by said Augustus Garrett to go and to be paid to Letitia Flaglor during her life, and at her decease to go and be paid to Charles D. Flaglor during his life, and as the share and proportion of said real

estate to go to the legitimate children of said Charles D. Flaglor, or if he should die leaving no such child or children, subject, however, to the payment of one-sixth part of the debts and claims against said estate due or to become due, and also the payment and discharge of one-third part of the specific bequests by said Will made and provided for, but to be free and exempt, however, from the payment of any liability and charge of and on account of the annuity, etc., income bequeathed to Mary Banks, and as the share and portion of said real estate to go to said James and Thomas G. Crow,
29 their heirs or assigns, upon the decease of said Letitia and of said Charles D., said Charles D. leaving no such child or children, over and above the property and share bequeathed directly to said James and Thomas G. Crow. Or that in the event that for any cause this Court should not adopt the appraisal and division of said real estate made as aforesaid, that this Court will appoint commissioners to assign and set off to said Eliza Garrett her share in said estate according to the statute in such case made and provided. And also to appraise and make a division of the balance of said estate so as that the said James and Thomas G. Crow may have their share set off to them, and the said Letitia and Charles D. Flaglor the share out of which their proportion of the income may be had and made,
30 to go to the reversioners after their death, subject to the liabilities of debts and other charges in said Will, as heretofore prayed.

"And that your petitioner may have such other, further and different relief as to equity and good conscience may seem meet.

"And that the said Letitia Flaglor, Frederick T. Flaglor and Charles D. Flaglor, Elizabeth Flaglor, Lucy Louisa Flaglor and Mary Banks may each and every of them, without oath, full, true and perfect answer make, to all and singular the premises as fully as if specially repeated, and that a summons may issue out of this Court under the seal thereof, directed to the said Letitia Flaglor, Frederick T. Flaglor, Charles D. Flaglor, Elizabeth Flaglor, Lucy Louisa Flaglor, and Mary Banks, commanding them as the law directs, to appear and answer the complaint of your petitioners, and your petitioners will ever pray, etc.

"ELIZA GARRETT,
"JAMES CROW.
"THOMAS G. CROW.

"GRANT GOODRICH, *Complts. Solr.*"

31 Upon which the following proceedings were afterwards had and entered of Record in said Court:

"And afterwards, to wit, on said 3d day of March, A. D. 1851, there issued out of and under the seal of said Court the people's Writ of Summons, directed to the Sheriff of Cook county to execute, and being in the words and figures following, to wit:

"'STATE OF ILLINOIS, } ss
"'COOK COUNTY, }

"'*The People of the State of Illinois to the Sheriff of said County, Greeting:*

"'We command you that you summon Letitia Flaglor, Frederick T. Flaglor,

Charles D. Flaglor, Elizabeth Flaglor, Lucy Louisa Flaglor, and Mary Banks, if they shall be found in your county, personally to be and appear before the Circuit
32 Court of said County on the first day of the next special term thereof, to be holden at the court house in Chicago in said county, on the fourth Monday of March instant, to answer unto Eliza Garrett, James Crow and Thomas G. Crow on a bill of complaint filed by them in said Court on the Chancery side thereof. And have you there this writ with an endorsement thereon in what manner you shall have executed the same.

"Witness, Louis D. Hoard, Clerk of the said Court and the seal thereof, at Chicago aforesaid, this 3rd day of March, A. D. 1851.

"L. D. HOARD,
[Seal.] *Clerk of the Circuit Court.*'

"And afterwards, to wit, on the day and year last aforesaid, the said writ was returned into said Court by said Sheriff endorsed as follows, to wit:

"I have not been able to find either of the within named defendants within my county.

"*March* 3, 1851. 1 Return, 10. WM. L. CHURCH, *Sheriff*,
"By D. S. WOOD, *Deputy*.'

33 "And on the same day last aforesaid the said petitioners filed in said Court a certain affidavit, in the words and figures following, to wit:

"Eliza Garrett, James Crow and Thomas G. Crow,
vs.
"Letitia Flaglor, Frederick T. Flaglor, Charles D. Flaglor, Elizabeth Flaglor, Lucy Louisa Flaglor and Mary Banks.

"J. A. Bross being duly sworn, says that he has been informed and believes that the above named defendants all reside out of this state.

"JOHN A. BROSS.

"Subscribed and sworn to before me this 1st day of March, 1851,
"LOUIS D. HOARD, *Clerk*.'

"And afterwards, to wit, on the second day of April, A. D. 1851, D. B. Hinman,
34 Samuel Dutton, Henry P. Lloyd and Julius D. Pratt, by Collins & Larned, their solicitors, filed, in said Court, their certain petition to make party, in the words and figures following, to wit:

"Eliza Garrett, James Crow, Thomas G. Crow,
Ex. Augustus Garrett, } *In Chancery.*
vs.
"Letitia Flaglor et al.

"E. C. Larned and Jas. Collins, attorneys of D. B. Hinman & Co., a firm composed of Daniel B. Hinman, Samuel Dutton, and Henry P. Lloyd, of Philadelphia, in the state of Pennsylvania, and attorneys also of Julius D. Pratt, of Hartford, ——, respectfully represent that they, said Hinman and Co., and the said Pratt, have an interest in and claim to the north half of block 73 in School Section Addition to the city of Chicago, a portion of the estate described in said bill and prayed
35 to be set off to the said Letitia Flaglor, and further, that the said D. B. Hinman & Co. and Pratt are about to file a bill in this Court to establish the said interest, and respectfully pray that they may be made parties defts. to the said bill, and have leave to answer said bill by the next term of this Court.

"D. B. HINMAN & CO., AND
"JULIUS D. PRATT,
"By COLLINS & LARNED, *Solicitors*.'

"Edwin C. Larned attorney of D. B. Hinman & Co. and Julius D. Pratt, above named, on oath makes affidavit that the facts in the above written petition set forth are true.

"EDWIN C. LARNED.

"Subscribed and sworn to before me this 27th day of March, 1851.
"L. D. HOARD, *Clerk*.'

"And afterwards, to wit, on the day last aforesaid, the said complainants by their solicitors filed, in said Court, their certain answer to the petition last aforesaid, in the words and figures following, to wit:

36 " " Eliza Garrett, James Crow and Thomas G. Crow, Executors of estate of A. Garrett, dec'd,
vs.
" " Letitia Flaglor et al.

" " In which D. B. Hinman & Co. ask to intervene and be made parties.

" " And the said complainants come, and for answer to the said motion and prayer of said petition, object to the granting of the same upon the grounds and for the reason that the granting the prayer of the complainants' petition cannot, in any wise, affect the rights of the said petitioners, and the granting the prayer thereof would be of great detriment to the said estate, by delaying the determination of the settlement of said estate, as between the legatees, and which settlement can, in no way, affect or delay the rights of said petitioners.

" " MORRIS & GOODRICH, *Compl'ts Solrs.*'

37 " And afterwards, to wit, at the March term, to wit, on the 2d day of April, A. D. 1851, the following, among other proceedings, were had in said Court, and entered of record, to wit:

" " Eliza Garrett, James Crow and Thomas G. Crow,
vs.
" " Letitia Flaglor, Frederick T. Flaglor, Charles D. Flaglor, Elizabeth Flaglor, Lucy Louisa Flaglor and Mary Banks. } *Chancery.*

" " This day come D. B. Hinman, Samuel Dutton and Henry P. Lloyd, by Messrs. Collins & Larned, their solicitors, and move the Court to be admitted parties to the bill of complaint herein, which said motion is resisted by Messrs. Morris and Goodrich, solicitors for the complainants in this cause.'

38 " And afterwards, to wit, at the term last aforesaid, to wit, on the third day of April, A. D. 1851, the following, among other proceedings, were had in said Court, and entered of record, to wit:

" " Eliza Garrett, James Crow, Thomas G. Crow,
vs.
" " Letitia Flaglor, Frederick T. Flaglor, Charles D. Flaglor, et al. } *Chancery.*

" " This day come the said complainants, by Morris & Goodrich, their solicitors, and the said defendants, by Larned & Collins, their solicitors, also come, and after hearing the arguments of counsel upon the motion to admit D. B. Hinman, Samuel Dutton, and Henry P. Lloyd as parties to this bill, it is ordered by the Court that the said motion be overruled.'

39. " And afterwards, to wit, on the 8th day of May, A. D. 1851, said complainants filed, in said Court, a certain certificate of publication, in the words and figures following, to wit:

" " STATE OF ILLINOIS, } ss.
COOK CIRCUIT COURT. } Of the March Special Term, 1851.

" " Eliza Garrett, James Crow and Thomas G. Crow,
vs.
" " Letitia Flaglor, Frederick T. Flaglor, Charles D. Flaglor, Elizabeth Flaglor, Lucy Louisa Flaglor, and Mary Banks. } *In Chancery.*

" " Affidavit having been filed in the office of the Clerk of the Circuit Court of said county, that the above named defendants reside out of the State of Illinois, you, the said defendants, Letitia Flaglor, Frederick T. Flaglor, Charles D. Flaglor, Elizabeth Flaglor, Lucy Louisa Flaglor, and Mary Banks, are hereby notified that the above named complainants, Eliza Garrett, James Crow, and Thomas G. Crow, filed their bill of complaint against you, the said defendants, in the office of
40 the Clerk of the Circuit Court of said county, on the third day of March, A. D. 1851. Now unless you, the said defendants, shall personally appear before the said Cook County Circuit Court, on the first day of the next special term thereof, to be holden at the Court House in the city of Chicago, in said County, on the fourth Monday of March, instant, and plead, answer, or demur to the said complainants' bill of complaint, the same will be taken as confessed against you, and the matters and things therein prayed for will be decreed accordingly.

" " L. D. HOARD, *Clerk.*

" " MORRIS & GOODRICH, *Complts. Solicitors.*'

" " This is to certify that the annexed notice was published in the Chicago Jour-

nal, a weekly newspaper printe l in the City of Chicago, county of Cook, and State of Illinois, four times, to wit, for four successive weeks, as follows: The first insertion on the 3d day of March, 1851, in Vol. 9, No. 371, and the last insertion
41 31st day of March, 1851, of said paper.

"'Dated at Chicago, 7 May, 1851. R. S. & C. L. WILSON,

"'*Publishers Weekly Journal.*'

"And afterwards, to wit, on the 9th day of May, in the year last aforesaid, the said defendants, Frederick T., Letitia, and Charles D. Flaglor, filed, in said Court, their certain answer to the said bill, in the words and figures following, to wit:

"'The answer of Frederick T. Flaglor and Letitia Flaglor, wife of said Frederick T. Flaglor, and Charles D. Flaglor, to the petition of Eliza Garrett, James Crow, and Thomas G. Crow, filed in the Cook County Circuit Court, on the Chancery side thereof:

"'These defendants, Frederick T. Flaglor, Letitia Flaglor, wife of the said Fred-
42 erick T. Flaglor, and Charles D. Flaglor, saving and reserving to themselves all manner of exception to the many errors and insufficiencies contained in the said petition, for answer thereunto say that the statements as made an l set forth in the said petition are true to the knowledge and belief of these respondents, and consent and pray that the prayer of the said petition may be granted.

"'FREDERICK T. FLAGLOR.
"'LETITIA FLAGLOR.
"'CHARLES D. FLAGLOR.

"'ARNOLD & LAY, *Solrs.* *By their Solrs.* ARNOLD & LAY.'

"And afterwards, to-wit, at the May term, to-wit, on the 9th day of May, A. D. 1851, the following, among other proceedings, were had in said Court, and entered of record, to wit:

"'Eliza Garrett, James Crow, and Thomas G. Crow,
vs.
"'Letitia Flaglor, Frederick T. Flaglor, Charles D. Flaglor, et al. } *Chancery.*

43 "'This day come the said complainants, by Grant Goodrich, their solicitor, and it appearing to the court that due notice of publication has been made in this cause, according to the statute in such cases made and provided, it is, on motion of said complainants' solicitor, ordered that B. S. Morris be appointed guardian *ad litem* for Elizabeth Flaglor and Lucy Louisa Flaglor, infant defendants herein, and the said defendant, Mary Banks, having failed to file her answer herein, as requested by the rule of this Court, it is further ordered that the said bill be taken as confessed against the said Mary Banks, for want of answer.'

"And afterwards, to wit, on the 10th day of May, A. D. 1851, B. S. Morris, guardian *ad litem* for said Elizabeth and Lucy Louisa Flaglor, filed in said Court the answer of said Lucy Louisa and Elizabeth, in the words and figures following to wit:

44 "'The answer of Buckner S. Morris, guardian *ad litem* of Elizabeth Flaglor and Lucy Louisa Flaglor, infants, to the bill of complaint of Eliza Garrett, James Crow and Thomas G. Crow, filed in this Court, against said infants and Letitia Flaglor, Frederick T. Flaglor, Charles D. Flaglor and Mary Banks.

"'This defendant, saving to himself on behalf of said Elizabeth Flaglor and Lucy Louisa Flaglor, infants, all manner of exception, etc., answering, saith that he is a stranger to all and singular the matters and things in the said complainants' said bill of complaint contained, and therefore leaves the said complainants to make such proof thereof as they shall be able. And this defendant further answering, saith he insists on behalf of said infants on all such right, title and interest in the premises in said bill of complaint described as said infants shall
45 appear to have therein. And this defendant humbly submits the same to the judgment, order and direction of this Honorable Court, and prays this Honorable Court to take care of the interest of said infants in said premises. And the defendant claims, etc., without that, etc.

"'B. S. MORRIS,

"'*Guardian ad litem for Elizabeth Flaglor and Lucy Louisa Flaglor.*'

"And afterwards, to wit, at the term last aforesaid, to wit, on the 10th day of May, the following, among other proceedings, were had in said Court, and entered of record, to wit:

" " Eliza Garrett, James Crow and Thomas G. Crow,
vs.
" " Letitia Flaglor, Frederick T. Flaglor, Charles D. Flaglor, Elizabeth Flaglor, Lucy L. Flaglor, and Mary Banks. } *In Chancery.*

46 " " This day comes Buckner S. Morris, guardian *ad litem* for said infant defendants, and files his answer herein, whereupon, upon motion of Grant Goodrich, complainants' solicitor, it is ordered that it be referred to the Master in Chancery of this Court to take proof of the material facts and allegations contained in said petition, and of the rights and interests of the parties herein, and report the same to this Court, together with his opinion thereon, with all convenient speed."

" And afterwards, to wit, at the term last aforesaid, to wit, on the 25th day of May, A. D. 1851, the following, among other proceedings, were had in said Court, and entered of record, to wit:

" " This day came the Master in Chancery of this Court and files herein the following report, to wit:

" " Eliza Garrett, James Crow and Thomas G. Crow,
vs.
" " Letitia Flaglor, Frederick T. Flaglor, Charles D. Flaglor, and Elizabeth Flaglor, and Lucy Louisa Flaglor, Children of Charles D. Flaglor, and Infants, and Mary Banks. } *Master's Report.*

" " It having been referred to me to take proof of the material facts and allegations set forth in the said complainants' bill of complaint in this cause, and report the same with my opinion thereon, with all convenient speed, I do respectfully report that on this twelfth day of May, A. D. 1851, at my office in Chicago, Cook County, Illinois, appeared the said complainants, by their solicitor, Grant Goodrich, Esq., when the following examination was had and testimony taken to wit:

" " WILLIAM BRIGGS being first duly sworn, deposes and says:

48 " " I was acquainted with Augustus Garrett, now deceased, during his lifetime. I knew him for two years or two years and a half before his death. I was acquainted with a portion of the Chicago city property at the time of his death, and which now belongs to his estate. I knew the property which he held in blocks thirty-one and twenty-one and seventeen and nineteen in the original Town of Chicago. In block thirty-one his property was principally covered with wooden buildings. There was in this block two hundred and sixty feet front on Lake street, I believe, all of which was covered with buildings, at least a building on every twenty feet front. On Market street, in the same block, aside from the buildings fronting on Lake street, there were, I think, four buildings, and on Franklin street, in the same block, there were four or five buildings, aside from those fronting on Lake street. A large portion of the buildings were owned by
49 Garrett, but some were owned by other parties. All the above described buildings have been burned up since Garrett's death, except two which are now standing, but so much injured that they are not worth half as much as before the fire. The firm, of which I am a member, Briggs & Greene, owned a store in the same block, which, previous to the fire, always rented readily and promptly for twenty-two dollars a month to good tenants, and I have no doubt, that Mr. Garrett's buildings rented equally as well, and some of his buildings standing on the corners of Lake and Market and Lake and Franklin ought to have brought at least a third more than ours did. The effect of the fire and consequent non-improvement of the property, has injured the value of the property in block thirty-one, fronting on Lake, Market and Franklin streets, in my estimation, at least fifty per cent.,
50 which will be a permanent depreciation, unless the property belonging to the Garrett estate is improved. The fire limits being extended over the premises, I think it would be difficult, if not impossible to rent the property at ground rent to any advantage. The property on the north side of Lake street, opposite to block thirty-one, and indeed the property in the vicinity generally has been materially injured in value by the destruction of the buildings on block thirty-one. Several buildings are now vacant in that vicinity, and cannot be rented, owing to that circumstance, business having been driven away from that part of the town, owing to the vacancy occasioned by the fire. On the property of Garrett in block 17, on the corner of
51 Dearborn and Water streets, there were buildings standing when Garrett died, all occupied by tenants; these buildings have since been burned up and the property stands vacant. The same objections to obtaining ground rent from this property

exist that do with regard to the property in block thirty-one, above spoken of. There is a brick house on State street, a brick house on South Water street, and a brick ice house on the north branch, belonging to the Garrett estate, aside from which I do not know of any buildings belonging to said estate that are not built of wood, and all, I believe, of them in the fire limits of Chicago. I consider it essentially important to the estate that the property should be improved as speedily as possible with good permanent buildings. If improved with good buildings I think the property would yield at once a good income at remunerative rates, and if not improved it must continue to be a bill of expense at increasing rates with the in-
52 crease of taxes. I think the longer delay there is in improving the property in block thirty-one, the greater and more permanent will be the injury, as business will wander to other parts of the city and get fastened there, unless it can be accommodated very soon, as it ought to be with good buildings on block thirty-one.

WILLIAM BRIGGS.

Subscribed and sworn to before me this twelfth day of May, A. D. 1851.

MARK SKINNER, *Master in Chancery.*

ELI B. WILLIAMS, being first duly sworn, deposes and says:

I knew Augustus Garrett in his lifetime, and had known for many years. I was acquainted generally with the property belonging to Garrett spoken of by Mr. Briggs in his deposition above, which I have read. The facts with regard to
53 the burning up of the buildings on the property I know to be as stated by Mr. Briggs in his said deposition, and I concur with him in the opinion that the property has been materially injured by the destruction of the buildings, and that the injury will be permanent unless the property is improved, and that it is absolutely essential for the interests of all concerned in the Garrett estate that it should be improved.

ELI B. WILLIAMS.

Subscribed and sworn to before me this 12th day of May, A. D. 1851.

MARK SKINNER, *Master, &c.*

WALTER S. GURNEE, being first duly sworn, deposes and says:

54 I was well acquainted with Augustus Garrett during his lifetime, and had known him for many years. I was generally acquainted with the property belonging to him at the time of his death spoken of in the deposition of Mr. Briggs above, which I have heard read. The facts stated by Mr. Briggs in his said deposition, with regard to the situation of the property at the time of Garrett's decease, and the subsequent destruction of the buildings by fire, I know to be as stated by him. I concur with him in the belief that the said property has been materially injured by the destruction of the buildings, and I esteem it essentially important for the interest of all parties concerned in the Garrett estate, that the said prop-
55 erty should be permanently improved as soon as possible. I am decidedly of opinion the longer the delay that is suffered to occur before the property is improved, the more serious and permanent will be the injury to the property.

W. S. GURNEE.

Sworn to and subscribed before me this twelfth day of May, A. D. 1851.

MARK SKINNER, *Master, &c.*

WALTER S. GURNEE recalled on the 15th day of May, A. D. 1851.

I was intimately acquainted with Augustus Garrett from the year A. D. 1836 up to the time of his death, which took place, as I think, some time in A. D. 1848. I was also acquainted with Mrs. Eliza Garrett, his wife, during that time and have been ever since. They had no children to my knowledge, and my intimacy with them was such that if they had, during that time, had any children, or if they had any children at the time of his death, or since, I should undoubtedly have
56 known it. I am satisfied that Mr. Garrett left no children at the time of his death, and none has been born since his death.

W. S. GURNEE.

Sworn to and subscribed before me this fifteenth day of May, A. D. 1851.

MARK SKINNER, *Master, &c.*

And I do further certify that the said complainants' counsel filed with me, and offered in evidence, the three certificates annexed, marked 'A,' 'B,' 'C,' of E. S. Kimberly, Clerk of the County Court in and for the County of Cook and State of Illinois. Also certified copies of the Will of Augustus Garrett, deceased, and the renunciation of Eliza Garrett attached to the bill of complaint on file in this cause. And I do further certify that from the said testimony adduced before me, as afore-

said, I am of opinion that Eliza Garrett, widow of Augustus Garrett, deceased, is
57 entitled to one-half of the real estate of which the said Augustus Garrett died seized, and that the same must be set off to her in due form of law.

And I do further certify that I am of opinion that it would be for the best interests of all the devisees named in the last will and testament of the said Augustus Garrett, deceased, that there should be a division of that portion of the real estate belonging to the estate of said Garrett remaining after the portion to which said Eliza Garrett is entitled shall have been set off to her, amongst the said several devisees in proportion to their various interests as devised to them in said Will, and further that such division should be made in manner and form as prayed for in said bill.

58 And I do further report my fees at ten dollars. All which is respectfully submitted.

MARK SKINNER, *Master in Chancery, &c.*

STATE OF ILLINOIS, }
COOK COUNTY. }

I, Edmund S. Kimberly, Clerk of the County Court in and for said county, do hereby certify that from an examination of the records in the Clerk's office, it appears that all of the personal property of the estate of Augustus Garrett, deceased, is entirely exhausted, and that there are claims against said estate yet unpaid.

In testimony whereof I hereto subscribe and affix the seal of the Court, this 21st day of May, A. D. 1851.

[Seal] E. S. KIMBERLY, *Clerk.*

STATE OF ILLINOIS, }
COOK COUNTY. }

59 I, Edmund S. Kimberly, Clerk of the County Court in and for said county, do hereby certify that I find upon the records in the office of the Clerk of the County Court that the last will and testament of Augustus Garrett was admitted to probate on the 28th February, A. D. 1849, and that on that day letters testamentary were granted to Eliza Garrett, James Crow and Thomas G Crow, and that the accounts current referred to in my certificate marked 'C,' annexed hereto, have, with their accompanying vouchers, been duly approved, and the accounts entered of record; that the vouchers aforesaid represent the payment of money on debts due by said estate, and proven before the County Court, and for city assessments, taxes on real property, money borrowed to pay debts and incumbrances on real estate belonging to said estate.

60 In testimony whereof I do hereunto subscribe my name and affix the seal of the Court this 13th day of May, A. D. 1851.

[Seal] EDMUND S. KIMBERLY, *Clerk.*

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

I, Edmund S. Kimberly, Clerk of the County Court in and for the county aforesaid, do hereby certify that the two and only accounts current of the executors of estate of A. Garrett, deceased, approved by the County Court and duly entered of record, viz: one bearing date Dec. 3d, A. D. 1849, and one bearing date Jan. 1st, 1851, show the following exhibit:

Received from all sources, including money borrowed from time to time - - - - - - - - - - - - -	$42,857 06
Payments on account of said estate of A. Garrett, deceased, for debts, insurance, taxes, assessments, borrowed money, etc. - -	$41,854 06

61 And I further certify, that the executors have not yet presented to the Court any claim against said estate for expenses or charges for attending to and managing said estate, and that there appears to be yet owing by said estate the sum of about ($16,000) sixteen thousand dollars.

In testimony whereof I hereunto subscribe my name and affix the seal of the Court this 16th day of May, A. D. 1851

[Seal] E. S. KIMBERLY, *Clerk.*

In the name of God, Amen.

I, Augustus Garrett, of the city of Chicago, in the county of Cook, and State of Illinois, do hereby make and declare this my last will and testament.

FIRST. I revoke all former wills by me at any time heretofore made.

62 "SECOND. I hereby constitute and appoint my wife, Mrs. Eliza Garrett, James Crow and Thomas G. Crow, all of said city of Chicago, and the survivor and survivors of them, executrix, executors and executor of this my last will and testament. Neither my executrix, executors or executor shall be required to give bonds as such executrix, executors or executor, unless my said wife Eliza shall desire the said Thomas and James, or the survivor of them, to do so; in which case, upon her filing a written request with the Probate Justice or in the office of the Probate of Wills in Cook county, Illinois, they shall immediately enter into such bonds as are required by law. In case, however, that the said Eliza shall marry again after my decease, she shall not have the right, after such marriage, or
63 after making a contract or become engaged to be so married, to require the said Thomas and James, or the survivors of them, to give such bonds, and in no event shall my said wife Eliza be required to give bonds, unless she shall be guilty of waste or devastation.

"THIRD. I desire and direct that, after the payment of all my funeral expenses, etc., the expenses of my last sickness, which are to be paid first of anything, that all debts due and owing by me at the time of my death, or that are a charge upon my estate, be paid as they respectively become due, out of money and moneys due me either from accounts, notes, bonds and mortgages, rents due and accruing, or from any and all other sources whatever, all of which said moneys and money and all money accruing to and received by said Eliza, Thomas and
64 James, and the survivors and survivor of them, from or on account of my said estate, I direct to be applied immediately and as fast as the same can be done towards the payment of the debts owing by me, it being my express desire and direction that all my said debts owing by me be paid off and settled as soon as the same can be done in conformity with the directions given herein. In case, however, there should not be sufficient moneys arising from any or all of the sources above named, to pay my debts as fast as they fall due, still I do not wish any of my real estate sold, but I wish my said executrix and executors and the survivors
65 and survivor of them to borrow from time to time sufficient money to pay said debts as fast as they become due, and for the purpose of enabling them to borrow moneys so to pay my said debts, I do hereby authorize them to pledge any personal property that may come to their hands from said estate, and to mortgage any real property belonging to my said estate, and to pay such interest upon loans so to be effected by them as may be necessary in order to procure the same, and I do hereby empower them to renew such loans from time to time until the money arising from the sources herein above described shall pay and discharge all my said debts. And I do direct that this course be pursued in all cases until the amount received from
66 debts to me, rents and other sources of income shall liquidate and discharge all debts, dues and demands due and owing by me, or that are a charge upon my estate. And I further direct that, until the death of my wife, Eliza, and of my sister, Mary Banks, and of my sister, Letitia Flaglor, them and each and all of them, that none of my real estate shall be sold, but the income therefrom shall be divided and distributed as hereinafter set forth.

"FOURTH. I give to my clerk, John Link, the following described real estate, to be his immediately upon my death, anything herein contained to the contrary notwithstanding, viz.: one hundred and sixty acres of land that I own in Lee
67 county, Illinois, said land lying opposite to the town of Dixon, and being all the land I own in said county of Lee. Also all my interest and property and real estate in Madison City, Wisconsin Territory, and also all my interest and property in certain lands at and about the mouth of Milwaukee river in said Wisconsin Territory. Also all my real estate and property in Ann Arbor, Michigan, and further, after the payment of all my just debts as herein above provided, I give and direct to be paid to said Link out of the income of my said estate the sum of fifteen hundred dollars, to be paid to him at as early a day as possible.

"FIFTH. I give to my beloved wife, Eliza Garrett, to be hers immediately
68 upon my death, all my household furniture of every kind and description, including plate, paintings, books, and all other personal property used in and about my house in adorning and decorating the same. I also give to her in fee simple, absolute, anything herein before contained to the contrary notwithstanding, the house and lot on Franklin street, in said city of Chicago, where I now reside, to be hers immediately upon my death, or if my said wife should prefer, she may take, in lieu

of said house and lot, the brick house and lot belonging to me in the brick row on and adjoining the south west corner of Adams and State street, Chicago, provided she make her election so to do and file a notice thereof in writing in the office of Justice of the Probate for Cook county, Illinois (or wherever else in said county the
69 Probate of Wills shall be had), within six months after my decease, and I further give and direct to be paid to my said wife, whenever and as soon as all the debts due and owing by me and that are a charge upon my estate shall have been paid, and the said sum of fifteen hundred dollars shall have been paid to John Link, as hereinabove given and directed, the one-third part of the entire net income from my estate, real and personal, which shall be paid to her without delay, trouble or annoyance to her, quarter yearly, on the first Mondays of the months of May, August, November and February, in each and every year during her natural life, to be paid to or upon the order of and used and controlled by my said wife individually, without any control, hindrance, or incumbrance of any other person or persons whatever.

70 " But I wish it to be distinctly understood that I intend the above gifts to my wife to be, and that she accept the same in full of her right of dower in my estate, and of all other right and property the law gives or may give her therein and I give and bequeath to her in manner and form as above set forth, upon condition that she, my said wife Eliza, shall, when demanded give to my said executors, or the survivor of them, to be filed in the office where Probate of Will shall be had and made, in said Cook county, a release of all demands and claims of dower and otherwise of and against my estate, save what I have herein given to her.

" SIXTH. After the payment of all my just debts, as herein above provided,
71 and after having paid to my said wife, Eliza, her third of the income of my estate, as above directed, I desire and direct that the remainder of the income of my said estate be divided in three equal portions, one of which said portions shall be paid to my sister, Mary Banks, of the city of Philadelphia, in the state of Pennsylvania, during her natural life, year by year, and quarterly in each year, upon her separate and single receipt therefor, and for her sole and exclusive benefit. And I do, in like manner, give and direct to be paid to my sister, Letitia Flaglor, wife of Frederick T. Flaglor, of Newberry, in the county of Orange, and state of New York, one other portion of said three equal portions, to be, in like manner, received by her for her sole and exclusive benefit, and upon her sole and single receipt, and without being liable to any charge, incumbrance, or lien whatsoever,
72 and to be entirely independent of any control, lien, encumbrance, or direction of her said husband; and I do, in like manner, give and direct to be paid to my two nephews, James Crow and Thomas G. Crow, in equal shares, share and share alike, the other portion of said three equal portions, and in case either said James or Thomas, or both, should die before the division of the entire estate, as hereinafter provided, then the said share of said portion which they would respectively have received had they or either of them lived, shall descend and belong to their heirs and devisees respectively. And I further direct that, in case Letitia Flaglor should die, leaving alive her son, Charles D. Flaglor, or any legitimate children of said Charles, that the said Charles, or if he be dead, his said children shall succeed to
73 and be entitled to receive the same portion of said income which his, said Charles', mother would be entitled to receive by any of the provisions herein contained. Upon the death of my wife, Eliza, the portion of my said income directed to be paid to her during her life shall be divided into three equal parts, one of which shall be paid to Mary Banks, one to Letitia Flaglor, and one to James and Thomas G. Crow, to be divided between said James and Thomas equally. Upon the death of Mary Banks all the income that she would be entitled to receive under and by virtue of any of the provisions contained herein, shall thereafter be divided into three equal parts, one of which shall go to Letitia Flaglor, one to James Crow, and one to Thomas G. Crow, and shall be paid to them respectively at the same time
74 and in the same manner that Mary Banks would have been entitled to receive the same if she were alive at that time. Upon the death of Letitia Flaglor and of her son, Charles, without legitimate issue of said Charles, the portion of said income and all the property which either the said Letitia or the said Charles would be entitled to receive by virtue of any provisions herein contained, shall descend and belong to said James and Thomas G. Crow, respectively, share and share alike, their heirs and devisees, except as hereinafter excepted.

" 'SEVENTH. Upon the death of my wife, Eliza and of Mary Banks and Letitia
75 Flaglor, I direct that the whole of my estate shall then be equally divided between Charles D. Flaglor, son of said Letitia, if he or his legitimate children survive said Letitia (in case he be dead, his legitimate children shall take as their father would if alive), and the said James Crow and the said Thomas G. Crow each taking one-third of the whole.

" 'But if Charles D. Flaglor be at that time dead leaving no legitimate children, the whole of my said estate shall be divided between the said James Crow and Thomas G. Crow.

" 'In all cases the heirs and devisees of the said James Crow and the said Thomas G. Crow, respectively, shall succeed to the right and portion which their ancestor and decedent would have received had he been alive, and in all cases the
76 heirs and devisees of the said James and Thomas respectively and the children (legitimate) of said Charles D. Flaglor, shall only succeed to and take the share or portion of income and of estate in general, which their ancestor or decedent would have had, taking *per stirpes* and not *per capita*.

" 'EIGHTH. Until my debts shall have been fully paid, as herein above directed, I direct and appoint that the sum of one thousand dollars shall be paid to my wife Eliza in each and every year from and after my death, until she shall begin to receive her full share of the income of my said estate, as above set forth, which said sum of one thousand dollars shall be paid to her at such times and in such instalments as she may wish, and shall be paid to her on demand. In like manner, I direct that there shall be paid to my sister, Mary Banks, the sum of
77 two hundred dollars a year out of the income of my said estate until my debts are paid and she begins to receive her share of the income of said estate, as above provided, which said sum shall be paid to her in quarter-yearly instalments, the first of which shall be paid to her within three months after my decease, and thereafter the payments shall be regularly made to her at the expiration of each and every quarter. Whenever and as soon as my wife Eliza and my said sister Mary shall begin to receive their full share of the income of my estate, as provided in the foregoing sections, the respective sums herein in this section directed to be paid to them shall cease to be paid to them.

" 'NINTH. My said nephews, James and Thomas G. Crow, shall, at all times,
78 have the right and power respectively to dispose, by devise or otherwise, of all the property, rights and interests which either of them has or may have respectively, under and by virtue of any or all the provisions herein contained.

" 'TENTH. I give and direct that there be paid to my namesake, Augustus Garret Seaman, the son of Willis Seaman, of Dixon, Lee County, Illinois, the sum of one hundred dollars a year until he arrive at the age of twenty-one years, to aid him in getting an education, said annuity to be paid to him out of the income of my estate after Mrs. Garrett and Mary Banks shall have first secured the amounts they are respectively entitled to under the foregoing provisions, and to be continued to him until he arrive at the age of twenty-one years, if he live so long,
79 but if he does not live so long, then as long as he does live. And I do further direct that when the said Augustus Garrett Seaman shall arrive at the full age of twenty-one years, there shall be paid to him out of my estate the sum of three thousand dollars, and in order to secure the payment to him of that sum, I further direct that if before he shall have arrived at the age of twenty-one years, my wife Eliza, Mary Banks, and Letitia Flaglor be each and all dead, so that the bulk of my estate come to be divided and distributed as hereinbefore directed, that then and in that case the said sum of three thousand dollars shall be reserved from the
80 bulk of my said estate before the division thereof, and shall be placed out at interest on bond and mortgage, and the said sum of three thousand dollars, together with the annual interest thereon from the time of putting the same out at interest shall be paid to said Augustus Garrett Seaman on his attaining to the age of twenty-one years. If, however, the said Augustus Garrett Seaman should die before arriving at the age of twenty-one years, this bequest of three thousand dollars shall not take effect, but shall lapse, and said three thousand dollars, if placed out at interest as above directed, shall be divided in the same manner and between the same persons, their heirs and devisees, that the bulk of my estate had been previously thereto divided.

81 " 'ELEVENTH. I hereby direct and declare that it shall and may be lawful for

my said executrix and executors, their respective heirs, executors and administrators, by and out of all or any of the moneys which, by virtue of this my Will, shall come to their or any of their hands, to deduct, retain to and re-imburse themselves all such reasonable costs and expenses as they respectively shall or may sustain, expend, or be put into, in or about the execution of this my will, and also that my said executrix and executors, their respective heirs, executor and administrators shall be charged and chargeable only, every of them, for and with his or her own respective receipts, payments, acts and wilful defaults, and not otherwise, and shall not be charged or chargeable with or for any sum or sums
82 of money other than such as shall actually or respectively come to his, her or their hands by virtue of this my Will, nor with or for any loss or damages which may happen in or about the execution hereof without his or their wilful default.

" In witness whereof I, the said Augustus Garrett, to this my last will and testament contained on six pages (including this), have hereunto set my hand and seal this thirtieth day of December, in the year of our Lord one thousand eight hundred and forty-seven, having also affixed my signature to each of the preceding pages.

" AUGUSTUS GARRETT [Seal.]

" Signed, sealed, published and declared by the said Augustus Garrett, the
83 testator, as and for his last will and testament, in the presence of us, who, at his request, and in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

" MARK SKINNER, *of Chicago, Ill.*,
" THOS. HOYNE, *of Chicago, Ill.*
" AUGUSTUS GARRETT. [Seal.]

" *Witnesses*, Mark Skinner,
Thomas Hoyne.

" STATE OF ILLINOIS,
Cook County.

" I, Edmund S. Kimberly, do hereby certify that the above is a true copy of the last will and testament of Augustus Garrett, late of Cook county, deceased, now on file in this office, and admitted to probate on the 28th day of February, A. D. 1849, and duly recorded on the Records of the Probate Court of Cook county, State of Illinois. In testimony whereof I do hereunto subscribe my name and affix the seal of the County Court of Cook county, this twenty-second day of May, A. D. 1851.

[Seal.] " E. S. KIMBERLY, *Clerk*.'

84 Then the following Renunciation:

SCHEDULE D.

" I, Eliza Garrett, widow of Augustus Garrett, late of the county of Cook, and State of Illinois de hereby renounce and quit all claim to the benefit of any jointure, bequest or devise made to me by the last will and testament of my deceased husband, which has been exhibited and proven according to law before and in the Probate Court of the county of Cook, and State of Illinois, and I do elect to take in lieu thereof my dower or legal share of the estate of my said husband under and according to the law and statute in such case made and provided, my said husband having died died leaving no children or descendants of children.

85 " In witness whereof I have hereunto set my hand and seal this fifteenth day of October, in the year of our Lord one thousand eight hundred and forty-nine.

" ELIZA GARRETT. [Seal]

" In presence of THOS. HOYNE, *Probate Justice, Cook Co., Ill.*'

" STATE OF ILLINOIS, } ss
COOK COUNTY. }

" I, E. S. Kimberly, Clerk of the County Court of Cook county, do hereby certify that the above is a true copy of the renunciation of Mrs. E. Garrett now on file in my office.

" In testimony whereof I have hereunto set my hand and seal of office this 22d day of May, A. D. 1851.

[Seal] " E. S. KIMBERLY, *Clerk*.'

86 " And afterwards, to wit, at the term last aforesaid, to wit, on the 24th day of May, A. D. 1851, the following among other proceedings were had in said Court and entered of record, to wit:

" " Eliza Garrett, James Crow and Thomas G. Crow,
vs.
" " Letitia Flaglor, Frederick T. Flaglor, Charles D. Flaglor, Elizabeth Flaglor, Lucy Louisa Flaglor, and Mary Banks. } *Chancery.*

" " And now, at this day, come the said complainants, by Goodrich, their solicitor, and the defendants, Letitia Flaglor, Frederick T. Flaglor, and Charles. D. Flaglor, by Arnold & Lay, their solicitors, and the said complainants file herein the report of Mark Skinner, Esq., the Master in Chancery of this Court, to whom,
87 at a former day of this Court, this case was referred, to take testimony and report thereon, and upon the reading and filing said report and the evidence taken and returned by said Master in this Court, and no exceptions having been filed or taken thereto, and the Court approving of the same, it is ordered, adjudged and decreed that the same do stand confirmed as the judgment of this Court, and the matters therein recommended be decreed accordingly. And it appearing from said report and the answers of said Letitia Flaglor, Frederick T. Flaglor and Charles D. Flaglor, and the testimony in this cause amongst other things, that the said Augustus Garrett died seized of the real estate hereinafter described, without any child or children, or descendants of any child or children, but leaving a will, a copy of
88 which, duly certified, is filed herein, leaving Eliza Garrett his widow, and that she had filed her renunciation of the benefits and bequest to her in said Will made, in the Probate Court of the county of Cook, and has elected to take her legal rights in said real estate, according to the statute in such case made and provided, and that she is entitled to one-half of the real estate of which said Augustus Garrett died seized, absolutely and in her own right in lieu of her dower, after the payment of all the just debts of her said husband. It is, therefore, ordered and decreed in accordance with the prayer of said complainants' bill of complaint, that one-half of the real estate described and mentioned, to wit:

" " Lots number three [3] and four [4] in block number thirty-one [31] in the
89 original town of Chicago. Also, the west half of the east half and the east half of the west half of lot number seven [7] in block thirty-one [31] in the original town of Chicago. Also, lots number one [1] two [2] three [3] and five [5] of Cambell's sub-division of lot number eight [8] in block number nineteen [19] original town of Chicago. Also, lot number seven [7] and fractional lot number two [2] in block number twenty-one [21] in original town of Chicago, including that part of the original alley lying between said lot number seven [7] and fractional lot number two [2] in said block number twenty-one [21] O. T. C. Also, that part of block number five [5] in block number twenty [20] in the original town of Chicago, commencing at a point ninety [90] feet from the corner of Lake and Franklin street, running thence north on a line with Franklin street, [34]
90 feet, thence east eighty [80] feet, thence south thirty-four [34] feet, thence west eighty [80] feet to the place of beginning. Also, that part of township number thirty-nine [39], section number twenty-two [22] north, range fourteen, (14) east of the third principal meridian, fronting on State street, two hundred and sixty-seven (267) feet, lying between the lands owned by Susannah Drake on the north and James D. Sherman on the south, and running east to Wabash Avenue, and two hundred and sixty-seven (267) feet fronting on Wabash Avenue, lying between the said tracts of land owned by Susannah Drake on the north and James D. Sherman on the south, and running east to the lands deeded by Augustus Garrett, deceased, to R. W. Patterson and Ira M. Weed, and two hundred and sixty-seven
91 (267) feet fronting on Michigan Avenue, between the said land owned by Susannah Drake on the north and James D. Sherman on the south, and running east to Lake Michigan, and 20 feet front on Franklin street off the south end of lot one (1) in block 31 in the original town.

" " Lot number one (1) in block number thirty-one (31) in the original town of Chicago, excepting 20 feet front on Franklin street off the south end of said lot. Also, the west half of lot number six (6) in block number twenty-one (21) in the original town of Chicago. Also, the east half of the west half of lot number eight (8) in block number twenty-one (21) in the original town of Chicago. Al-
92 so, the east half and the east half of the west half of fractional lot number one (1) in block number twenty-one (21) in the original town of Chicago, including all that part of the original alley (now vacated) lying in the rear of said east half and east half of the west half of said fractional lot one (1) in said block twenty-

one (21) O. T. C. Also, that part of lot number one (1) in block number seventeen (17) original town of Chicago, commencing at the north east quarter of said lot number one (1) and running thence south on a line with Dearborn street fifty (50) feet, thence west forty-four (44) feet, thence north fifty (50) feet, thence east on a line with South Water street forty-four (44) feet to the place of beginning. Also, the east forty-four (44) feet of wharfing lot number five (5) original town
93 of Chicago. Also, lots number eleven (11) and fifteen (15) in Waubansia addition to Chicago. Also, lots number fifteen (15) and sixteen (16) in block number thirteen [13] in Fort Dearborn addition to Chicago. Also, that part of lot number fourteen [14] in block number thirteen [13] in Fort Dearborn addition, commencing at the south west corner of said lot number fourteen [14] running thence north on a line with State Street twenty [20] thence east one hundred and fifty [150] feet, thence south twenty [20] feet, thence west one hundred and fifty [150] feet to the place of beginning, and that part of said lot number fourteen (14) in said block number thirteen (13) Fort Dearborn addition, commencing at the northwest corner of said lot fourteen (14) and running thence south on a line with
94 State street eight (8) feet, thence east one hundred and fifty (150) feet, thence north eight (8) feet, thence west one hundred and fifty (150) feet to the place of beginning. Also, that part of lots number one (1) and two (2) in block number one hundred and forty (140) in School Section addition, commencing twenty feet and 7 inches (20 7-12) feet, from the corner of State and Adams street, running thence south on State street twenty feet and seven inches [20 7-12], thence west seventy-five [75] feet, thence north twenty feet and seven inches [20-7-12], thence east seventy feet to the place of beginning, and an alley commencing 71 feet from the corner of State and Adams, running thence south 20 7-12 feet, thence west four [4] feet, thence north 20 7-12 feet, thence east four feet to the place of beginning.

95 · · · The north half of block number seventy-three [73] in School Section addition to Chicago. Also, the west quarter of lot number eight [8] and the west quarter of fractional lot number one [1] in block number twenty-one [21] in the original town now city of Chicago, including that part of the original alley between said west quarter of lot number eight [8] and the said west quarter of fractional lot number one [1] in said block number twenty-one [21] O. T. C. Also, the west half of the east half of lot number two [2] in block number thirty-one [31] in the original town of Chicago. Also, that part of lot number one [1] in block number eighteen (18) in the original town of Chicago, commencing twenty-two (22) feet from the corner of Clark and South Water street running thence west on
96 a line with South Water street twenty feet, thence south seventy (70) feet, thence east twenty [20] feet, thence north seventy (70) feet to the place of beginning. Also, lot number twenty-five (25) in block number nine (9) in Fort Dearborn addition to Chicago. Also, that part of lot number fourteen (14) in block number thirteen (13) in Fort Dearborn addition to Chicago, commencing at a point on State street twenty (20) feet, north of the southwest corner of said lot number fourteen (14) running thence north, on a line with State street, twenty [20] feet, thence east to the alley one hundred and fifty (150) feet, thence south twenty (20) feet, thence west one hundred and fifty (150) feet to the place of beginning.

· · · That is to say, of the said real estate there be set off to the said Eliza Garrett one equal half in value and income in lieu of the dower in said real estate, abso-
97 lutely, and in her own right, in fee simple, and inheritance for ever, as if she had acquired the same when sole, but to be subject to the payment of one-half the debts and claims now remaining against said estate. And it further appearing from the testimony and the report of said Master that it is for the interest of all the devisees named in said last will and testament of said Augustus Garrett, deceased, and that it is necessary for the preservation of said estate, and to prevent the same from going to waste, that the said real estate not specifically devised by said will be divided and set apart to the several devisees in said will and complainants' bill
98 of complaint mentioned, and to those legally entitled thereto. And it appearing further from the answers of said Letitia Flaglor, Frederick T. Flaglor and Charles D. Flaglor filed herein, that the facts and charges in said bill set forth are admitted, and the necessity of such division admitted and that they assent to and desire the prayer of said bill of complaint to be granted by this Court.

· · · It is, therefore, further adjudged and decreed that of said real estate in said

bill of complaint mentioned, there be set off to James Crow and Thomas G. Crow two-sixths in value and quantity and as equal to the production of two-sixths of the income of the whole of said real estate as their just share thereof, subject, however, to the payment of two-sixths of the debts and claims against said
99 estate now unpaid, and two-thirds of the specific cash legacies and annuities in said will mentioned, and to the whole of the annuity and income charged upon said estate by said will and payable to said Mary Banks, as prayed in said bill of complaint, and that the annuity in said will mentioned to be paid to said Mary Banks be charged upon said portions of said estate so set off to said James and Thomas G. Crow to said Mary Banks in the amounts and at the times as directed in said will.

"'It is further ordered, adjudged and decreed that, of the said real estate in said bill of complaint mentioned, there be set off one-sixth part in value and quantity of said real estate, and as equal to the production of one-sixth part of the income of the whole of said real estate as the just share of said real estate to
100 go to said Letitia Flaglor during her life time, and the said Charles Flaglor during his life time, if he survive said Letitia, and in fee simple to the child or children of said Charles Flaglor, if any survive to him, and in default of such child or children, then to said James Crow and Thomas G. Crow, subject, however, to the payment of one-sixth part of the debts and claims against said estate now unpaid, and to one-third of the specific cash legacies and annuities in said will mentioned. And it is further ordered and decreed that William Jones, James H. Rees and John H. Dunham be and the same are hereby appointed commissioners (they nor neither of them being connected by consanguinity or affinity with any of the parties to this suit) to set off to said Eliza Garrett one equal half of said
101 real estate in said decree mentioned in value and quality, and also to set off and apart to James and Thomas G. Crow one-third part and portion of said real estate of one-third in value, and adequate to the production of one-third of the income of all of said real estate as their share under said will and this decree, and that they further designate and set off to and for the use of Letitia Flaglor, Charles D. Flaglor and his children him surviving, one-sixth part of the whole of said real estate, and of one-sixth the value thereof, adequate to the production of one-sixth part of the income of the whole of said estate as the just share and portion to be set off to said Letitia and Charles D. Flaglor, and his child or children him sur-
102 viving, and to go to the said James and Thomas G. Crow if said Charles die leaving no child or children.'

"And afterwards, to wit, at the term last aforesaid, to wit, on the 26th day of May, A. D. 1851, the following among other proceedings were had in said Court and entered of record, to wit:

"'Eliza Garrett, James Crow and Thomas G. Crow,
vs.
"'Letitia Flaglor, Frederick T. Flaglor, Charles D. Flaglor, Elizabeth Flaglor, Lucy L. Flaglor, and Mary Banks. } *Chancery.*

"'And now at this day come the said commissioners and file their report under the decree of the Court, which is as follows, to wit:

"'We, the undersigned, appointed commissioners by the Cook County Circuit
103 Court in the case of Eliza Garrett, James Crow, and Thomas G. Crow, complainants, against Letitia Flaglor, Frederick T. Flaglor, Charles D. Flaglor, Elizabeth Flaglor, and Lucy Louisa Flaglor, infant children of Charles D. Flaglor, and Mary Banks, in said Court pending, on the Chancery side thereof, to make division of the real estate in the bill of complaint and in the decree in said case described, of which Augustus Garrett died seized, and set off the same in conformity to the directions of said decree, and having been first duly sworn in conformity with the statute in such case made and provided, by the Clerk of this Court, do report to this Honorable Court, that we have examined into the value and income of said real estate
104 and find that the division of the same, as set forth in said bill of complaint and agreed upon by the parties therein named, is the fair and equal value of the same, quality and income considered, and do adjudge that the following described real estate is equal in value to one-half of the whole of said real estate in said bill of complaint mentioned, and the portion of the whole of said estate to which said Eliza Garrett is entitled under said decree to have set off to her according to quality

bill of complaint mentioned, there be set off to James Crow and Thomas G. Crow two-sixths in value and quantity and as equal to the production of two-sixths of the income of the whole of said real estate as their just share thereof, subject, however, to the payment of two-sixths of the debts and claims against said
99 estate now unpaid, and two-thirds of the specific cash legacies and annuities in said will mentioned, and to the whole of the annuity and income charged upon said estate by said will and payable to said Mary Banks, as prayed in said bill of complaint, and that the annuity in said will mentioned to be paid to said Mary Banks be charged upon said portions of said estate so set off to said James and Thomas G. Crow to said Mary Banks in the amounts and at the times as directed in said will.

"'It is further ordered, adjudged and decreed that, of the said real estate in said bill of complaint mentioned, there be set off one-sixth part in value and quantity of said real estate, and as equal to the production of one-sixth part of the income of the whole of said real estate as the just share of said real estate to
100 go to said Letitia Flaglor during her life time, and the said Charles Flaglor during his life time, if he survive said Letitia, and in fee simple to the child or children of said Charles Flaglor, if any survive to him, and in default of such child or children, then to said James Crow and Thomas G. Crow, subject, however, to the payment of one-sixth part of the debts and claims against said estate now unpaid, and to one-third of the specific cash legacies and annuities in said will mentioned. And it is further ordered and decreed that William Jones, James H. Rees and John H. Dunham be and the same are hereby appointed commissioners (they nor neither of them being connected by consanguinity or affinity with any of the parties to this suit) to set off to said Eliza Garrett one equal half of said
101 real estate in said decree mentioned in value and quality, and also to set off and apart to James and Thomas G. Crow one-third part and portion of said real estate of one-third in value, and adequate to the production of one-third of the income of all of said real estate as their share under said will and this decree, and that they further designate and set off to and for the use of Letitia Flaglor, Charles D. Flaglor and his children him surviving, one-sixth part of the whole of said real estate, and of one-sixth the value thereof, adequate to the production of one-sixth part of the income of the whole of said estate as the just share and portion to be set off to said Letitia and Charles D. Flaglor, and his child or children him sur-
102 viving, and to go to the said James and Thomas G. Crow if said Charles die leaving no child or children.'

"And afterwards, to wit, at the term last aforesaid, to wit, on the 26th day of May, A. D. 1851, the following among other proceedings were had in said Court and entered of record, to wit:

"'Eliza Garrett, James Crow and Thomas G. Crow,
vs.
"'Letitia Flaglor, Frederick T. Flaglor, Charles D. Flaglor, Elizabeth Flaglor, Lucy L. Flaglor, and Mary Banks. } *Chancery.*

"'And now at this day come the said commissioners and file their report under the decree of the Court, which is as follows, to wit:

"'We, the undersigned, appointed commissioners by the Cook County Circuit
103 Court in the case of Eliza Garrett, James Crow, and Thomas G. Crow, complainants, against Letitia Flaglor, Frederick T. Flaglor, Charles D. Flaglor, Elizabeth Flaglor, and Lucy Louisa Flaglor, infant children of Charles D. Flaglor, and Mary Banks, in said Court pending, on the Chancery side thereof, to make division of the real estate in the bill of complaint and in the decree in said case described, of which Augustus Garrett died seized, and set off the same in conformity to the directions of said decree, and having been first duly sworn in conformity with the statute in such case made and provided, by the Clerk of this Court, do report to this Honorable Court, that we have examined into the value and income of said real estate
104 and find that the division of the same, as set forth in said bill of complaint and agreed upon by the parties therein named, is the fair and equal value of the same, quality and income considered, and do adjudge that the following described real estate is equal in value to one-half of the whole of said real estate in said bill of complaint mentioned, and the portion of the whole of said estate to which said Eliza Garrett is entitled under said decree to have set off to her according to quality

and quantity, and do set the same off to said Eliza Garrett as her equal half thereof, to wit:

"'Lots number three [3] and four (4) in block number thirty-one (31), O. T. Chicago. Lots number seven (7) and fractional lot number two (2) in block number twenty-one (21), O. T C., including that of the original lying between said
105 lots. Also, twenty (20) off of the south end of lot number one (1) in block number thirty-one (31), O. T. C. Also, the west half of the east half and the east half of the west half of lot number seven (7) in block number thirty-one (31), O. T. C. Also, that part of lot number five [5] in block number twenty [20], O. T. C., commencing at a point ninety [90] feet from the corner of Lake and Franklin street, running thence north on a line with Franklin street thirty-four (34) feet, thence east eighty (80) feet, thence south thirty-four (34) feet, thence west eighty (80) feet to the place of beginning. Also, lots one (1), two (2), three [3] and five [5] of lot eight (8) in block number nineteen (19), O. T. C. Also, that part of township thirty-nine (39), section number twenty-two (22), range N. number fourteen
106 [14], east of the third principal meridian, fronting two hundred and sixty-seven [267] feet on State street between the lands owned by James D. Sherman on the south and the heirs of Susannah Drake [deceased] on the north, and running east to Wabash Avenue. Also, that part of said sec. [22], township 39, fronting on Wabash Avenue 267 feet, lying between the said lands of James D. Sherman on the south and the heirs of Susannah Drake on the north, and running east to the lands deeded by Augustus Garrett, deceased, to R. W. Patterson and Ira W. Weed. Also, that part of said section number 22, township 39, range 14, fronting on Michigan Avenue 267 feet, lying between the said tracts of land owned by James D. Sherman on the south and the heirs of Susannah Drake on the north, and running east to Lake Michigan.

107 "'And we do further report that the following described real estate of the said real estate in said order and decree mentioned, is equal in quantity and value to two-sixths of all the lands in said order and decree of said court mentioned, and to two-thirds of the one-half remaining after the one-half above set off to Eliza Garrett, and as adequate to the production of two-sixths of the income of the whole of said estate and of two-thirds of the said one-half, and that the same ought to be set off to James Crow and Thomas G. Crow under said order as their just and true share of the same, and we do therefore set off the same to James Crow and Thomas
108 G. Crow as their portion of said real estate under the order of said court, to wit: Lot one [1] in block thirty-one (31), O. T. C., excepting and reserving the south 20 feet of said lot. The west half of lot No. six (6) in block No. twenty-one (21) O. T. C., the east half of the west half of lot No. eight (8) in block No. twenty-one (2) O. T. C., the east half and east half of the west half of frantional lot No. one (1) in block twenty-one (21) O. T. C., including that part of the original alley in the rear of said lots. Lots number eleven (11) and fifteen (15) in Wabansia addition to Chicago. Also, forty-four (44) feet wharfing lot number five (5) O. T. C. Also, that part of lot number one (1) in block number seventeen (17), commencing at the north east corner of said lot and running thence west on South Water street forty-
109 four (44) feet, thence south fifty (50) feet, thence east forty-four (44) feet, thence north on a line with Dearborn street fifty (50) feet to the place of beginning. Also, that part of lots number one (1) and two (2) block number one hundred and forty (140), School Section addition, commencing 20 feet and 7 inches from the corner of State and Adams streets, running thence south on State street 20 feet 7 inches, thence west 75 feet, thence north 20 feet 7 inches, thence east 75 feet to the place of beginning, including the alley four feet wide, running out to Adams street. Also, lots number fifteen (15) and sixteen (16) in block number thirteen (13), in Fort Dearborn addition to Chicago. Also, that part of lot number 14 in said block thirteen (13), commencing at the south west corner of said lot 14 and running
110 thence north on a line with State street twenty (20) feet, thence east one hundred and fifty (150) feet, thence south twenty (20) feet, thence west one hundred and fifty (150) feet to the place of beginning. Also, that part of said lot number 14 in said block number 13, Fort Dearborn addition, commencing at the north west corner of said lot and running thence east one hundred and fifty (150) feet, thence south eight (8) feet, thence west one hundred and fifty (150) feet, thence north on a line with State street eight feet to the place of beginning.

"'And we do further report that the following described real estate of the real

32 child or children, then to go to and become the property in fee of the said James Crow and Thomas G. Crow, their heirs and assigns, in fee simple, as of the equal one-sixth value of said real estate in said bill mentioned, and adequate to the production of one-sixth of the income thereof, but to be subject to the payment of one-sixth the just debts and claims against the said Augustus Garrett, deceased, and subject to the payment of one-third of the cash legacies and annuities in said will mentioned. And it is further ordered and decreed that the said Eliza Garrett, James Crow, Thomas G. Crow, Letitia Flaglor, and Charles D. Flaglor pay the costs of this suit in proportion to their several interests in the real estate aforesaid.

33 And your oratrix further states that upon said bill, the answer of said Letitia, Frederick T., and Charles D. Flaglor, expressly consenting to and joining in the prayer of said bill, the answers of said infants, the master's and commissioner's reports, the approval and consent of said Letitia, Frederick T., and Charles D. Flaglor signified and declared by them and their counsel in open court to the said partition as prayed for in said bill, and adopted and carried into effect by said court in and by its said decree, made on the 24th day of May, A. D. 1851, and in and by its final decree made on the 26th day of May, A. D. 1851, the said court did make partition of said real estate among the said several parties to said suit, being the devisees named in said will of said Augustus Garrett, as prayed for by said bill, and in manner and form as agreed, consented to, and arranged by and between the said Eliza Garrett, James Crow, Thomas G. Crow, and Letitia, Frederick T., and Charles D. Flaglor, as aforesaid. And that thereby, namely, in virtue of and by said decree and judgment of said circuit court for partition aforesaid, the lands, tenements, and real estates in said bill, reports, and decrees mentioned and described as being allotted, set off, and divided to said Letitia Flaglor for life, remainder to said Charles D. Flaglor for his life, remainder to his child or children who should survive him, did vest in said Letitia for the term
34 of her natural life and no longer, with a remainder to said Charles D. Flaglor for the term of his life and no longer.

And that thereby and by force and effect of the said decree of partition so being as aforesaid made and entered of record at the express prayer and consent of said Charles D. Flaglor, he, the said Charles D. Flaglor, became upon the death of said Letitia entitled to and seized of said lands for the term of his life, and of no other or greater estate, interest, or title whatsoever, in or to the same. And your oratrix further states that the partition and allotment of land and of estates and interests therein, so as aforesaid agreed upon by the said parties, and sanctioned, carried into effect, and made and executed by the said decree of said Circuit Court of Cook County, was beneficial and advantageous to both the said Letitia Flaglor and to said Charles D. Flaglor, and that thereby a freehold estate for her life was given to and obtained by said Letitia. Whereas otherwise and by the will of said Augustus Garrett she had no estate in the land itself given to her, but only an annuity of variable and uncertain amount to be paid to her during her life. And that thereby a vested estate or freehold in said premises for his own life-

time was given to and vested in said Charles D. Flaglor, ready to come into possession at once, upon the termination of his mother's preceeding life estate, and free from any condition and all uncertainty whatever. Whereas by the will of Augustus Garrett
35 he, the said Charles, could not have any estate or interest whatsoever in the land vested in him prior to the death of said Eliza Garrett, Letitia Flaglor, and Mary Banks named in said will. And also thereby said lands and premises so set off, allotted, and limited to said Flaglors in succession were released and discharged from the claim and right of said Eliza Garrett, to be endowed thereof as by law, and but for said agreement for partition and decree was his right. And your oratrix further states that one principal inducement and consideration for the said Eliza Garrett consenting to give up and relinquish her claim to dower in that part of the estate of Augustus Garrett which was set off to said James and Thomas G. Crow and to said Flaglors in succession as aforesaid and for the said Eliza Garrett, James Crow, the executors in trust of said will consenting to the giving, allotment, and limitation of said estates for life to said Letitia and Charles D. Flaglor, in anticipation of the period for final division of said estate, as prescribed by said will, and while it yet remained uncertain whether under said will said Charles D. Flaglor would ever have any interest either in the annuity therein directed to be paid to said Letitia for her life, or in the corpus of the estate itself, was the solemn agreement and covenant by the said Letitia, Frederick T., her husband, and Charles D. Flaglor, recited and set forth in said bill, their answer
36 thereto, and the record of proceedings and decrees thereupon entered of record as aforesaid, that an estate in remainder, next after said life estates in said lands allotted to the said Flaglors, should be vested in, allotted, and limited to the child or children of said Charles D. Flaglor who should survive him, and that without such allotment and limitation being expressly made, consented and agreed to by the said Charles D. Flaglor, and expressed in and secured by the said proceedings for partition, and the record thereof as aforesaid, neither the said Eliza Garrett nor James Crow and Thomas G. Crow, the executors in trust of said will, would have consented or agreed to the partition of said estate as in favor of said Letitia and Charles D. Flaglor being made otherwise than as directed by said will.

And your oratrix further states and charges that said partition, allotment, and limitation of lands, estates, and interests therein, so as aforesaid made, declared, and executed by said decree of said court upon said bill, answer, and the express consent and prayer of said Charles D. Flaglor for the making of the same, as shown by the said record, was a final, irreversible, immutable adjudication, settlement, and limitation of the several and respective rights, titles, and interests of each and all of the said parties to said decree, including the said Charles D. Flaglor and the said defend-

ants and all others claiming or to claim title to said prop-
37 erty, or any part thereof, by, through, or under said Charles D. Flaglor, by deed or title derived from or through said Charles D. Flaglor subsequent to said decree of said court for partition, made and entered of record at the May term, A. D. 1851. And that said Charles D. Flaglor in his lifetime, and the said defendants, and all others deriving title as aforesaid, were and are barred, bound, concluded, and estopped forever from setting up or making claim of any title to said premises, or any part thereof, greater than or different from that which was so declared and adjudged to be in him, the said Charles D. Flaglor, by said decree under said will, to wit, a life estate, and from disputing, denying, or impugning the title and right of your oratrix thereto, as likewise declared by said decree under said will to be in her, to wit, an equitable estate in fee simple upon her surviving said Charles D. Flaglor, next in remainder after the termination of said life estate so thereby as aforesaid given and limited to and vested in said Letitia and said Charles successively as aforesaid.

And your oratrix further states that forthwith upon the making and entry of said decree of said court for a partition of said premises, the said Letitia and said Charles D. Flaglor, with her knowledge and consent, entered into the possession of said lands, tenements, and real estates, so set off and allotted to them for life successively as aforesaid, and into the receipt of the rents, is-
38 sues, and profits thereof, under said decree. And that said Letitia and Charles then and thereby elected to accept, and did accept, receive, and have the full benefit and advantage of said decree and agreement for a partition. And during the full term of their lives, by themselves, their agent, representatives, and privies, the said Letitia and Charles did continue in the possession of said premises and in the receipt of the rents, issues, and profits thereof, and in the enjoyment of the benefit and advantage of said agreement and decree for partition and of the said partition so thereby made as aforesaid.

And your oratrix further states that on the — day of November, A. D. 1855, the said Eliza Garrett, one of the executors of said will of Augustus Garrett, departed this life; and that on the 8th day of February, A. D. 1856, the said Letitia Flaglor departed this life; and that on the 23d of December, A. D. 1858, the said Charles D. Flaglor departed this life, leaving alive at his death your oratrix, Elizabeth Flaglor, his sole child who survived him, the said Lucy Louisa Flaglor having departed this life sometime in May, 1852, an infant of tender years, never having married, and having no issue or child. And your oratrix further states that upon the death of said Charles D. Flaglor, the said lands and premises so as aforesaid set off and allotted to him for life by said decree and proceedings in partition, by force thereof and in accordance with the
39 provisions of said will of said Augustus Garrett in that behalf, became and were vested in your oratrix, the sole sur-

viving child of Charles D. Flaglor, in an equitable estate thereof in fee simple absolute, and that she immediately thereupon became and was entitled to the said premises in possession, and to the rents, issues, and profits thereof.

And your oratrix further states that Godfrey A. Jessel, Catherine Reid, Joseph H. Mather, and Theodore H. Curtis, who your oratrix prays may be made parties defendant hereto, upon the death of the said Charles D. Flaglor, on or about the 23d day of December, 1858, and who well knew and had actual notice of all the facts hereinbefore set forth, namely, of the making and existence of said agreement for partition and of said bill, answers, proceedings thereupon, orders and decrees of said court contained and set forth in and shown by the said record, and of said partition so thereby made as aforesaid, and who more particularly well knew and had actual notice that said Charles D. Flaglor had only a life estate or interest in said lands, and that upon his death the same belonged to and vested in your oratrix, the sole surviving child of said Charles D. Flaglor, in fee simple absolute, and who well knew and had actual notice that your oratrix was then a minor of tender years, fraudulently and unlawfully entered and intruded upon the possession of parcel of said lands set off and allotted as
40 aforesaid to your oratrix, to wit, the following: lot 25, block 9, Fort Dearborn addition to Chicago, in Cook County, Illinois, and into the receipt and enjoyment of the rents, issues, and profits thereof, and have so continued in such possession and in such receipt and enjoyment of said rents, issues, and profits thereof from that time to the present, and still continue to withhold such possession and the rents, issues, and profits of said premises from your oratrix in defiance of her just rights thereto.

And your oratrix further states that the rental of said property and the fair value of the rents, issues, and profits thereof year by year from the 23d day of December, A. D. 1858, to the present time would amount to the sum of eight thousand dollars a year or thereabouts, and that the total amount of said rental and of the rents, issues, and profits of said property for eight years, that said defendants have been in possession thereof, amounts to the sum of sixty-five thousand dollars or thereabouts, as your oratrix is informed and charges the fact to be.

And your oratrix further charges that said defendants are bound to account and answer for and to pay over to your oratrix the value and amount of the said rents, issues, and profits of said property for the whole time they have been in possession thereof, and in the receipt and enjoyment of said rents, issues, and profits,
41 with lawful interest thereon, to be computed with annual rests in the account.

And your oratrix further states that she has often applied unto the said defendants and demanded of them, and each of them, to surrender and deliver up to your oratrix possession of said premises, and to account for and pay over to her the rents, issues, and profits

thereof so as aforesaid by them received, and your oratrix had well hoped that no difficulty or dispute would have arisen with said defendants touching the premises, but that they and each of them would have been minded and disposed to comply with your oratrix, reasonable request, and to act with and towards your oratrix, touching the matters aforesaid, according to equity and good conscience. But now so it is, may it please your honors, that said defendants, James Crow and Thomas G. Crow, the surviving executors of said Augustus Garrett, who your oratrix prays may be made defendants thereto, Godfrey A. Jessel, Catherine Reid, Joseph H. Mather, and Theodore H. Curtis, combining and confederating together, and with divers persons at present unknown to your oratrix, whose names when discovered she prays she may have leave to insert herein, with apt words to charge them as parties defendant hereto and contriving to wrong and injure your oratrix in the premises, the said defendants absolutely refuse to comply with
42 such requests, and to deliver up possession of said premises, and to account for and pay over to her said rents, or any part thereof.

All which actings and doings of said defendants are contrary to equity and good conscience, and that to the manifest wrong, injury, and oppression of your oratrix in the premises. In consideration thereof and forasmuch as your oratrix is entirely remediless in the premises at the common law, and can only have relief in a court of equity. To the end that the said James Crow and Thomas G. Crow, the surviving executors of the said Augustus Garrett, Godfrey A. Jessel, Catherine Reid, Joseph H. Mather, and Theodore H. Curtis, and the rest of the confederates may, their oaths being waived, answer the premises the same as if hereinafter repeated, and that said defendants may come to a fair and just account with your oratrix of and concerning the rents, issues, and profits of said premises from the 23d day of December, A. D. 1858, till now, and may be ordered and decreed to pay the same over to your oratrix, all just and proper deductions, if any, being made, and may give up, surrender, and deliver the possession of said premises to your oratrix, and that the said Crows, the surviving executors in trust of the said Augustus Garrett's will, may be ordered to convey and
43 release to your oratrix the legal title and estate of said lands. And that your oratrix may have such further and other relief in the premises as the nature of the case shall require and to your honors shall seem meet. May it please your honors to grant unto your oratrix the writ of summons directed to the said defendants, thereby commanding them and each of them, at a certain day therein named, to be and appear before your honors, and then and there to answer all and singular the matters aforesaid, but without oath, and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet, and your oratrix shall ever pray, &c.

ARTHUR W. WINDETT,
Solr. for Complt.

To the honorable the judges of the Superior Court of Chicago in chancery sitting:

Humbly complaining showeth unto your honors your oratrix, Lucy C. Flaglor, the sole heir-at-law, devisee, and executrix of Elizabeth Flaglor, late of Chicago, Cook County, Illinois, deceased, that on the twenty-fifth day of February, A. D. 1867, the said Elizabeth Flaglor, by John Link, her next friend, filed in this court her bill of complaint against Godfrey A. Jessel, Catherine Reid, Joseph H. Mather, and Theodore H. Curtis, and James Crow and Thomas G. Crow, the surviving executors of Augustus Garret, as the defendants thereto, therein stating that said Augustus Garrett
44 died in 1848, seized, among others, of lot 25, block 9, Fort Dearborn addition to Chicago, leaving a widow, one Eliza Garrett, since deceased, but leaving no children or any descendant of a child alive at his death and testate, leaving a will duly executed, whereof probate had been duly made in the Probate Court of Cook County aforesaid, whereof said Eliza Garrett and said James Crow and Thomas G. Crow were appointed the executors, in and by which will said Augustus Garrett had disposed of his entire estate, both real and personal, a copy of said will being set forth in the body of said bill.

That in 1851, upon a bill praying for a partition of said devised estate, filed by said executors in the Cook County Circuit Court, against Letitia, Frederick T., and Charles D. Flaglor, and Elizabeth and Lucy Louisa Flaglor, children of said Charles D. Flaglor, and Mary Banks, all named and referred to in said will, and being all the persons who, under said will, had any interest in said devised estate as parties defendants, and upon the answering and by the consent and agreement of said Letitia, Frederick, and Charles D. Flaglor, the answers of said children of Charles, by their guardian ad litem, and master's report and evidence, and commissioner's report, by the final decree and order of said circuit court then and there having jurisdiction of all and each of said parties and of said
45 cause, partition, in manner and form as prayed for in said bill, was made of said estate, including the premises herein in question, among the said several parties to said cause, and in and by said partition by said final order and decree the said lot 25, block 9, Fort Dearborn addition to Chicago, was allotted, limited, and set apart to said Letitia Flaglor for the term of her life, remainder to said Charles D. Flaglor for his life, remainder to his surviving child or children, and for want of such in remainder to said James Crow and Thomas G. Crow in fee.

That said partition and limitation of estate and interests and the said decree making the same were had and made by said court by and with the express consent, agreement, and authority of said Letitia, Frederick, and Charles D. Flaglor, and when made the said decree and partition thereby made, and the benefit thereof, and the said successive life estates thereby given and limited to said

Letitia and Charles in succession, were accepted, received, had, and enjoyed by said Letitia and Charles as being their right under said will, and in lieu and satisfaction of any, whatever right they or each of them had by and under said will or any clause thereof, and that thereby said Letitia, Frederick, and Charles, and their subsequent privies in estate and grantees, including the said defendants who are in possession of said premises, claiming title under said Letitia, Frederick, and Charles D. Flaglor, became and were estopped, barred, and concluded, a full copy of the record of said bill
46 for partition, proceedings thereupon, and of the order and final decree of said court, being for greater certainty set forth in said bill as part thereof.

That said executors and parties to said decree, in execution of said decree, on the 29th day of May, 1851, made, executed, and delivered to each other certain interchangeable deeds of partition, with a certain contract as part thereof, to be shown to the court, and therein referred to as bearing the same date, declaring limitations of estate and interest, subject to which said partitions deeds were made and taken. And thereby praying that the said surviving executors, James Crow and Thomas G. Crow, be ordered to convey and assure to said complainant, Elizabeth Flaglor, who was the sole surviving child of said Charles D. Flaglor, the legal title and estate vested in them by said will, alleging that she had survived the said Eliza Garrett, Mary Banks, Letitia Flaglor, and said Charles D. Flaglor, and that said Jessel, Reid, and the other defendants to said bill might account for the rents, issues, and profits of said premises, and subject to just deductions, pay the same over to said complainant, and also give up and surrender to her the possession of said premises, and for such other relief as should be just.

And your oratrix further showeth that said defendants, having been duly served with process for that purpose, appeared and filed demurrers to said bill as of record appears, and that the
47 said Elizabeth Flaglor having in the month of March, A. D. 1867, attained the full age of eighteen years, lately, on or about the first day of August, A. D. 1867, made, and duly published her last will and testament in writing, duly witnessed according to law, and thereby she made and appointed your oratrix (who is also the heir-at-law of said Elizabeth Flaglor) her sole executrix and devisee of all her estate, both real and personal, and that afterwards, on the ninth day of August, A. D. 1867, the said Elizabeth Flaglor departed this life, unmarried, and without having had any child or children, and leaving your oratrix her sole heir-at-law.

And your oratrix further showeth that afterwards, at October term of the Cook County court, the said will was admitted to probate and probate thereof made, and your oratrix appointed executrix of said will, and letters testamentary were thereupon issued to your oratrix under the seal of said court.

And your oratrix further showeth that by reason of the death of said Elizabeth Flaglor it hath become and is necessary to have

said suit revived. And your oratrix, as she is advised, is entitled to prosecute said suit and proceedings in her name as being such sole heir-at-law, devisee, and executrix of said deceased, and to have the same proceed, carried on, and directed by her and in her name, and to have the cause revived as against the said defendants, and to have the said cause put in the same plight and
48 condition as the same were in previous to the death of said Elizabeth Flaglor, to have the benefit of said proceedings and entitled to the same relief and decree as the said Elizabeth, if alive, would have.

To the end that the said defendants may answer the premises, and that the said suit and proceedings may stand revived and be proceeded with and prosecuted in the name of and by your oratrix as being such heir, devisee, and executrix of said deceased, and be in the same plight and condition as the same were in at the time of the death of said Elizabeth Flaglor. And that your oratrix may be declared, deemed, and adjudged entitled to the same right, relief, and decree therein as the said Elizabeth, if alive, would have, or that the said defendants may show good cause to the contrary.

May it please your honors to grant to your oratrix a writ of summons to revive said cause and answer said bill issuing out of and under the seal of this court, to be directed to the defendants to said original bill above named, thereby commanding them and each of them, at a certain day and under a certain penalty to be therein limited, personally to be and appear before your honors in this honorable court, then and there to answer the premises and said original bill as part hereof, and to show cause, if they can, why the said suit and the proceedings therein had should not stand and
49 be revived against them and be proceeded with and prosecuted by your oratrix in her own name as aforesaid, and be in the same plight and condition as the same were in at the time of said Elizabeth Flaglor's death, and if no such cause be shown that it may be ordered, adjudged, declared, and decreed that your oratrix is well entitled to the same right, relief, and decree as the said Elizabeth Flaglor would, if alive, and that said defendants may stand to, abide by, obey, and perform such order and decree in the premises as to your honors shall seem meet. And your oratrix shall ever pray, &c.

LUCY C. FLAGLOR,
By ARTHUR W. WINDETT, *her Solr.*

ARTHUR W. WINDETT,
of Counsel, &c.

Superior Court.

ELIZABETH FLAGLOR, &c.,
vs.
GODFREY A. JESSEL, CATHERINE REID, JOSEPH H. MATHER, and THEODORE H. CURTIS. } In Chancery.

And now comes Lucy A. Flaglor by Arthur Windett, her solicitor, and suggests and shows to the court that Elizabeth Flaglor, the complainant in the bill named, on the 9th day of August, A. D. 1867, departed this life testate, leaving a will duly executed and witnessed according to law, and leaving the said Lucy C. Flaglor her sole heir-at-law; that said Elizabeth, on the eighteenth
50 day of March, A. D. 1867, attained and became of the full age of eighteen years, and in and by the said will she constituted and made the said Lucy C. Flaglor her sole executrix and devisee of all her estate, real and personal, and that said will has been duly admitted to probate by the Cook County Court, at the October term, A. D. 1867, and that the said Lucy C. Flaglor was, by the order of said court, appointed executrix of said Elizabeth Flaglor, and letters testamentary were thereupon issued to her under the seal of said court, whereof the said Lucy C. Flaglor is ready to make proof and produce the same in court herein when and as she may be required in that behalf.

And the said Lucy C. Flaglor prays that said suit may be allowed to proceed in the name of her, the said Lucy C. Flaglor, as being the sole heir-at-law, devisee, and executrix of said Elizabeth Flaglor, deceased, pursuant to the statute in such case made and provided.

LUCY C. FLAGLOR,
By ARTHUR W. WINDETT, *her Sol.*

ARTHUR W. WINDETT,
of Counsel, &c.

STATE OF ILLINOIS, }
COOK COUNTY. } *ss.*

Arthur W. Windett, being first duly sworn, saith on oath that he is the solicitor for complainant of record in said cause, and that the facts as stated and set forth in said suggestion of Elizabeth Flaglor's death are true in substance and fact as therein set forth, and further he saith not, &c.

51 ARTHUR W. WINDETT.

Subscribed and sworn to, this — day of ———, A. D. 1872.

To the honorable the judges of the Superior Court of Chicago in chancery sitting:

Humbly complaining showeth unto your honors your oratrix, Lucy C. Flaglor, by this her amended bill: that in the autumn of 1850, the said Charles D. Flaglor was appointed the attorney of Letitia Flaglor and of Frederick T. Flaglor, his father and mother, by deed under seal by them executed, to take all legal proceedings that might be necessary in order to obtain from the executors of said Garrett's estate the share of income thereof which said Letitia Flaglor was entitled to under the said will of Augustus Garrett, and that in and by said power of attorney the said Charles D. Flag-

lor was, among other things, further expressly empowered and authorized to agree and covenant to a just and equitable division of the real estate of said Augustus Garrett among the heirs, devisees, and legatees of the said Augustus Garrett, and to make, execute, acknowledge, and deliver, in the names and on their part and behalf, all deeds, conveyances, or instruments in writing that might be necessary to effect and perfect such division as aforesaid, and to do all acts and things in relation to such division as to him
52 should seem meet for their interest in the premises, thereby giving and granting to the said Charles D. Flaglor full power and authority to do and perform all and every act and thing whatsoever that might be requisite and necessary to be done in and about the said premises, as by said power of attorney, the original whereof in the hands of said James Crow, of said defendants, it is hereby prayed that he may be ordered to produce; and which was duly acknowledged by the said Letitia and Frederick T. Flaglor, and duly recorded in book 38 of deeds, at page 307 thereof, in the office of the recorder of deeds in and for said Cook County, Illinois, whereto for greater certainty your oratrix refers as part of this her amended bill.

And your oratrix further showeth unto your honors that thereupon afterwards, in the month of November, A. D. 1850, the said Charles D. Flaglor came to Chicago and investigated the condition of the said estate of said Augustus Garrett, in the hands and management of the said executors thereof, under said will, and conferred with them of and respecting the condition and circumstances of said estate and the situation of the property, and the general interests therein under the said will, of the said Letitia, of the said Charles D. Flaglor himself, and of his children, then born or to be born, who should survive him.

And your oratrix further states that the said Charles D. Flaglor, at the same time, consulted and advised with the said Ar-
53 nold and Lay, and others, who were counsel in high standing in Chicago at that time, as to the nature, quality, and extent of the interest or estate in the lands and premises constituting the estate of said Augustus Garrett, to which he, the said Charles D. Flaglor, was entitled under and in virtue of the said will of said Garrett, and then and there employed them as his counsel in his behalf, to advise with him in respect of his interest in said estate, and to represent and protect him in any and whatever proceedings might be requisite to be instituted in order to make partition of the same.

And your oratrix further states that said Charles D. Flaglor, by means of the investigation which he then made as to the circumstances, situation, and condition of said estate, learned and became informed of the facts respecting the same, in substance, as set forth and stated in the original bill for partition and in the record of the proceedings and decrees therein of said circuit court, as contained

in the printed portion of the original bill herein, and particularly that said Eliza Garrett was entitled to different rights in said estate from what the will gave her, that she refused to accept the benefit of the provisions of said will in her own behalf, and that by reason thereof, and of the other facts and circumstances contained and stated in said bill for partition, master's report, the commissioner's report, and the said decree above referred to, it had become
54 and was expedient and necessary that a division and final partition of said estate be made before the time provided in that behalf by said will.

And your oratrix further states that during the latter part of the year 1850, and the early part of the year 1851, divers conferences, interviews, and negotiations were had from time to time by the said Charles D. Flaglor with the said Eliza Garrett and the said James Crow and Thomas G. Crow, touching and respecting the several and respective interests in the said estate touching and respecting a division of the estate and the way and manner for making and effecting such division, having due regard to the rights of all of the said several parties in interest, the circumstances of the case, and the will of said Augustus Garrett.

And your oratrix further states that the said Charles D. Flaglor, with a view to such partition being made, carefully examined the circumstances, condition, and value of the several parcels of land constituting the said estate, the maps and plans representing the same were prepared for and made by him and the said Eliza Garrett and the said Crows; and that separate lists were finally made for what lots and parcels should be allotted and set off to the said Eliza Garrett, James Crow, Thomas G. Crow, and to the Flaglors, consisting of his mother, Letitia, himself, and his said children, by mu-
55 tual agreement, consent, and choice, which lists are the same as are contained and set forth in said bill for partition before referred to.

And your oratrix further states that prior to the making of the agreement for partition, as recited and set forth in said bill for partition, the said Charles D. Flaglor did especially consult and advise with his said counsel respecting the quantity, nature, and extent of his own interest in said estate under the said will of Augustus Garrett and the provisions thereof, and was, after due examination by them of said will, and upon mature consideration thereof, fully advised and informed that his own interest was but a life estate and that his children who should survive him were and would be entitled to a remainder in fee of and in all the lands which should be divided or set apart to him, said Charles D. Flaglor, under any of the provisions of said will.

And your oratrix further states and charges that such was the true intent and meaning of said will in that behalf; that said counsel so consulted by and advising said Charles D. Flaglor were familiar with the language and provisions of said will and had been pre-

viously employed and consulted by parties in interest under said will as to the provisions thereof, as was then well known to the said Charles D. Flaglor, who was thereby induced in part to consult with them and to employ them in behalf of himself, his father and mother.

56 And your oratrix further states that in making the said investigation into the state and condition of said estate, and in his conferences and negotiations with said executors for a partition thereof, he acted as well for himself as for the said Letitia as her attorney and agent under the said power of attorney.

And your oratrix further states and charges that the said Charles D. Flaglor, about the latter end of the year 1850, or the beginning of 1851, and before the said bill for partition was filed, having full knowledge of the circumstances and condition of said estate, and being fully advised by his counsel as to the value, extent, and quality of the interest in said estate to which he was entitled under and by virtue of the provisions of said will as to the interests under said will of his children, and acting as well on his own behalf as the agent and attorney of said Letitia Flaglor and Frederick T. Flaglor, under the said power of attorney before referred to, made and entered into an agreement, arrangement, and understanding with the said Eliza Garrett, James Crow, and Thomas G. Crow for a partition and division of said estate, to be made in the manner set forth and contained in said bill for partition and in the record of proceedings and decrees of said circuit court in partition, as set forth in the original bill herein.

And your oratrix further states that in and by said agree-
57 ment so made by said Charles D. Flaglor with the said Eliza Garrett, James Crow, and Thomas G. Crow, it was particularly and expressly agreed upon and provided that only an estate for life in the lands to be set off and allotted to the Flaglor *stirps* was to be or should be allotted or set off to or vested in him, the said Charles D. Flaglor, and that a remainder in said lands should be allotted to and vested in his children who should survive him.

And your oratrix further showeth unto your honors that it was a part of said arrangement and agreement for partition that the same should be made by means of a bill in chancery, to be filed in said circuit court by said executors as parties complainants, and that said Charles D. Flaglor and the said Letitia Flaglor and Frederick T. Flaglor and the children of said Charles then living, being the same who are named in said bill for partition, including the said Elizabeth Flaglor, should be made parties defendant to said bill, and by the decree of said court to be made and entered by the joint consent of said Elizabeth Garrett, James Crow, Thomas G. Crow, Charles D. Flaglor, Letitia and Frederick T. Flaglor.

And your oratrix further states that it was at the same time further agreed by and between the said Elizabeth Garrett, James Crow, and Thomas G. Crow, and the said Charles D. Flag-

58 lor, acting for himself and as the agent of the said Letitia, under the said power of attorney, that Grant Goodrich, esquire, who was the attorney of the said executors, should prepare and file said bill in chancery for partition, and should conduct the said proceedings for the partition of said estate, that the expenses of said suit and proceedings, including the counsel fees of said Goodrich for services therein, should be borne by all the said parties in proportion to their several interests.

And your oratrix charges that, under and in pursuance of said agreement, said Grant Goodrich filed said bill, conducted the said proceedings therein to the final decree, and caused and procured the said partition to be made by the decree of said circuit court.

And your oratrix further states that some time in the year 1851, after the said decree was entered and the partition of said estate was made, the said Charles D. Flaglor, Letitia Flaglor, and Frederick Flaglor, with full and actual knowledge and notice of said decree and of the limitations therein contained, and particularly that only a life estate was therein given to said Charles next in remainder after the life estate of said Letitia, and that the fee was limited and given to his children who should survive him, sanctioned, ratified, and adopted the same and the acts of said Goodrich in filing said bill and procuring said decree to be entered and said partition to be made, and paid him their proportion of his charges for said services, being, to wit, fifty dollars; the residue thereof being paid by said executors as had been previously agreed upon in that behalf by them with the said Charles and said
59 Letitia.

And your oratrix charges that the said Charles D. Flaglor, Frederick and said Letitia, jointly with said executors, employed and made the said Goodrich their solicitor and attorney for the purpose of drafting and filing said bill, instituting and conducting the said suit and proceedings for partition of said estate, procuring said decree to be entered, and the said partition of said estate thereby to be made, and that the said Frederick, Letitia, and Charles, within lifetimes, were, and the said defendants herein claiming title under them or either of them as aforesaid, are bound, barred, concluded, and estopped by said decree and proceedings in partition and by the acts of said Goodrich therein.

And your oratrix further states that in the year 1850, at the time of making said agreement and arrangements with said executors for the partition of said estate by means of an amicable suit, for that purpose to be instituted as aforesaid, the said Charles D. Flaglor, as well for himself as attorney for said Letitia, appointed and made the said James Crow, one of the executors, the agent for himself and for said Letitia for the purpose of having said amicable suit instituted and prosecuted, and the final decree therein entered for partition and a partition of said estate thereby made, and then and there fully authorized and empowered the said James Crow to

do and have, or cause to be done on behalf of said Charles and Letitia, any and all acts and things necessary or expedient thereto.

60 And your oratrix further charges that said Charles then and there expressly left the whole matter of said suit and proceedings for partition of said estate in the hands of said James Crow, and directed and expressly authorized him to have said suit carried through and the partition consummated by a decree of said court as speedily as possible.

And your oratrix charges that said suit for partition was instituted, prosecuted, and the interlocutory and final decrees therein were entered by the authority, procurement, and direction and consent of said Charles D. Flaglor, Letitia and Frederick T. Flaglor, and they and each of them were, and said defendants as their privies are, bound, concluded, and estopped thereby.

And your oratrix further states that by the will, without the decree, said Charles D. Flaglor never had, nor could have, any vested estate or interest for life or otherwise in said lands or any part thereof, inasmuch as by the said will it was provided that no division of said estate should be made until after all the debts should have been fully paid.

Your oratrix states and charges that owing to the diminished income of said estate from the causes stated in said bill for partition and referred to in said defendants' answers herein, and the great amount and increase of the taxes, assessments, and debts with which said estate was chargeable, and which could only be paid off from the rents of the estates and by borrowing money, if necessary, on bond or mortgage, according to the provisions of the will

61 in that behalf it would have taken until 1862, ten years and upwards from the time when said partition was made, and three years after said Charles D. Flaglor's death, in December, 1858, fully to pay off and satisfy said indebtedness, and to release and discharge said estate therefrom, before which time said debts would not nor could have been paid off or extinguished if the said will had been followed in that regard.

And your oratrix further states and charges that under said will no partition or division of said estate nor any allotment of or share thereof to said Flaglors could or would have been made during the lifetimes of said Letitia and Charles but for said decree of said court, by the consent of said Flaglors, including the said Charles, and unless he, the said Charles, had expressly agreed and consented to accept and be bound by said decree and partition thereby made.

And your oratrix further charges that under the will and apart from said decree the said Charles was only entitled to have, and could only have had, from and after his mother's death, in February, 1856, to the time of his own death, in December, 1858, a small and variable annuity, and not any estate or interest in or to said lands, or any part thereof, and that under the express language of said will the remainder in fee of said Flaglors' share of said estate

vested in said Elizabeth Flaglor absolutely upon her surviving the said Charles.

62 And your oratrix further states that said Charles D. Flaglor thereupon retained and employed, and caused to be retained and employed, the said Arnold and Lay to appear for and to represent himself and the said Letitia Flaglor and Frederick T. Flaglor in said suit to be instituted for the purposes aforesaid, and to file the joint answer of said Charles D. Flaglor, Letitia Flaglor, and Frederick T. Flaglor to said bill of complaint for partition.

And your oratrix further saith that said Charles D. Flaglor authorized and directed the said Arnold and Lay to file an answer to said bill admitting the allegations thereof and consenting and praying that partition should be made and decreed by said court, as prayed for in said bill and in accordance with the said agreement for partition so made as aforesaid and in said bill set forth, and as was recited in and shown by the proceedings of said court in said cause and by its decree therein.

And your oratrix further states that the sixth part of said estate so set apart and allotted to said Flaglors in succession, comprised the most productive and available parts of said estate at the time, and those which without building or making costly outlays for improvements thereon yielded the largest income.

And your oratrix further states that said Charles D. Flaglor insisted and claimed, at and during the negotiations with said executors for a division of said estate, that the several lots and par-

63 cels which *was* so set apart and allotted to said Flaglors in succession, being then presently productive and yielding an income without further outlay as aforesaid, ought to be and should be so allotted to them, for the reason that as his mother had but a life estate therein, and as he himself would have but a life estate therein next after her, without any power under the will or otherwise to sell, charge, or incumber the same in any manner or for any purpose, and as his children entitled next in remainder after them were infants and wholly incapable of sanctioning anything that he, said Charles, or his mother, might do by way of changing the interest of said children.

And your oratrix states and charges that he, moved and largely influenced by these considerations, the said Elizabeth Garrett and James Crow, Thomas G. Crow consented to and acquiesced in the said request of said Charles, and in the choice and selection of lots and parcels of said estate so made by the said Charles D. Flaglor, being and comprising the lots in said lists marked "C" in said bill for partition, including the premises herein in question.

And your oratrix further states that said bill for partition was drawn and framed in accordance with and in pursuance of said agreement and arrangement for partition so made by and between the said Eliza Garrett, James Crow, and Thomas G. Crow, of the one part, and the said Charles D. Flaglor, acting for himself

64 and as the agent of and attorney of said Letitia and Frederick T. Flaglor, under the said power of attorney above mentioned, of the other part, and was filed according to the said agreement and understanding of the said parties in that behalf, and that said Charles D. Flaglor, Letitia Flaglor, and Frederick T. Flaglor were duly notified thereof by due legal service of process in that behalf and otherwise.

And your oratrix further states that afterwards, on the third day of May, 1851, the said defendant James Crow made to said Charles D. Flaglor a remittance of $25, and caused to be written and sent to him a letter containing said remittance, and thereby expressly advising and informing him, the said Charles D. Flaglor, and through him the said Letitia and Frederick T. Flaglor, of the said proceedings in partition and of the pendency thereof in said circuit court, and containing, among other things, the following words: "The court will sit on Monday, the 5th, when the business will be attended to and a final division of the property made," thereby meaning and referring to the business of and connected with said partition and the proceedings in said court for effecting the same, and to said estate. Which letter and remittance were duly received by said Charles D. Flaglor; the original and copy-book letter of which said letter are now in the possession of said James Crow, which it is prayed he may be ordered to produce for inspection and use herein as evidence by your oratrix.

65 And your oratrix further states that on receiving said letter and remittance contained in it the *said* Charles D. Flaglor came to Chicago in order to attend to the making and effecting said partition as had been previously agreed upon and arranged by and between himself and the said executors; and thenceforth, during and while said proceedings were going on, and until the final decree was made and entered, he was in Chicago, and then well knew of, sanctioned, and approved the same, and by himself and his counsel was fully cognizant of and consenting to all whatever was done in the course of said proceedings, participated therein, joined in making choice of and designating the commissioners who acted in the case, and who, in making the report to the court of the partition made by them, adopted, followed, accepted, and reported the same partition and allotment which had been previously and was then made, agreed upon, and assented to by said Charles D. Flaglor, together with the said executors as aforesaid, and made no objection thereto, or to any of said proceedings, as by said record of proceedings, reference being had thereunto, appears.

And your oratrix further states that on the ninth day of May, A. D. 1851, pursuant to said arrangement and agreement as aforesaid made by the said Charles D. Flaglor with the said ex-
66 ecutors, and to the retainer, appointment, and authority in that behalf which said Arnold & Lay had received from the

said Charles D. Flaglor, Letitia, and Frederick T. Flaglor, they, the said Arnold & Lay, entered the appearance of the said Charles, Letitia, and Frederick T. Flaglor in said court and cause, waiving formal service of process upon them, and filed in said court and cause the joint answer of said Charles, Letitia, and Frederick T. Flaglor to said bill for partition so as aforesaid filed by said executors; which answer is now on file in said court and cause, whereunto your oratrix refers as part hereof, and is the same answer in the original bill herein, reciting the said record of proceedings in partition, already referred to and set forth.

And your oratrix further saith that said Charles D. Flaglor knew of, approved, sanctioned, and directed the said answer to be filed; that he was fully aware of, knew, and consented to the bill of complaint and the allegations and statements therein contained, and the effect and nature thereof, so far as the same concerned or related to his own rights and interest under said will; that he did not wish to contradict, dispute, or question the same or any part thereof; that he knew the same to be true and correct, and that by the partition therein prayed for, and by the decree therein asked to be entered and made by the said court, only a life estate in the said premises, so allotted and set apart to the said Flaglors in succes-
67 sion, would belong to or be given to or vested in himself, and that a remainder in fee in favor of and to his children who should survive him would be thereby limited, allotted to, and vested in his said children.

And your oratrix further states and expressly charges that all the several proceeding in partition, including the master's and commissioners' reports, and both the interlocutory and final decree therein and the said partition so thereby made, declared, and decreed as aforesaid, even had been made and entered into with full knowledge, consent, approbation, and agreement of the said Charles D. Flaglor, in that behalf acting as well for himself as for the said Letitia and Frederick T. Flaglor, as the agent under said power of attorney.

And your oratrix further states and expressly charges that the said Charles D. Flaglor immediately upon said final decree of May 26th, 1851, being made and entered, accepted, and received the same and benefits thereof, and thereby well knowing the nature and effect of the limitations therein contained elected to be bound and concluded.

And your oratrix further states that immediately upon the making of said final decree the said Eliza Garrett, James Crow, Thomas G. Crow, Charles D. Flaglor, and said Letitia and Frederick T. Flaglor made, executed, and delivered said deeds of partition dated May 29th, 1851, referred to in said answers of defendants in the intended execution, performance, and consummation of said
68 decree of partition of said circuit court, and of said arrange-

ment and agreement for the division of said estate, and at the same time made and entered into the said written agreement accompanying the said deeds, which was signed and made as part of the same transaction, and was designed and meant to control, limit, and explain said deeds, being the same mentioned in said answers.

And your oratrix further states that on the 19th day of May, 1851, at the same time that said deeds from Eliza Garrett and James and Thomas G. Crow, referred to in said answers herein, and as part of the same act and transaction, the said Eliza Garrett and James and Thomas G. Crow, and the said Charles D. Flaglor and Letitia and Frederick T. Flaglor made and entered and duly signed, executed, and delivered a certain agreement in writing, in words and figures following, to wit: "Whereas the undersigned have simultaneously herewith deeded each to the other this day certain interests which we respectively possessed or may have been supposed to possess in the estate of Augustus Garrett, deceased, in order to secure more effectually each to the other the title to the respective lands in said deeds described, we hereby, however, declare said deeds to be subject to the following limitations, that is to say, the real estate deeded to Eliza Garrett is subject to the payment of one-half the debts and claims now existing and
69 unpaid against the said Augustus Garrett, deceased, and the lands deeded to James Crow and Thomas G. Crow are subject to the payment of one-third of the debts of said Augustus Garrett, now unpaid, and to two-thirds the specific cash legacies and annuities in the will of said Augustus Garrett mentioned, and the lands so deeded to Letitia Flaglor and Charles D. Flaglor are to be and are subject to the payment of one-sixth part of the debts and claims against the said Augustus Garrett, deceased, and to one-third of the actual cash legacies and annuities in said will mentioned, and to the whole and entire interest of the child and children and the descendant and descendants thereof Charles D. Flaglor, which him may survive, in said estate of said Garrett, which, under said will, such child, children, and descendant or descendants may have or at any time be entitled to; which said interest of such child or children or descendant is hereby declared and agreed to be charged upon the lands in said deed to Letitia and Charles D. Flaglor and Frederick T. Flaglor, husband of said Letitia, hereby assume to satisfy said interest of any such child or children or descendants thereof which they may be entitled to under and by the terms of said will, and to save and keep harmless the share and portions of said real estate so deeded to said Eliza Garrett, James Crow, and Thomas G. Crow from all claim and claims which any such child or
70 children of said Charles D. Flaglor may have or become entitled to under said will or the decree of any court now made or hereafter to be made.

In witness whereof we have mutually and interchangeably and hereto set our hands and seals, this 29th day of May, A. D. 1851.

(Sgnd.) ELIZA GARRETT. [SEAL]
(Sgnd.) JAMES CROW. [SEAL.]
(Sgnd.) THOMAS G. CROW. [SEAL.]
(Sgnd.) CHARLES D. FLAGLOR. [SEAL.]
(Sgnd.) LETITIA FLAGLOR, [SEAL.]
(Sgnd.) By her attorney in fact, Charles D. Flaglor.
(Sgnd.) FREDERICK T. FLAGLOR, [SEAL.]
(Sgnd.) By his attorney in fact, Charles D. Flaglor.

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

I, Henry W. Clarke, a notary public in and for said county in the state aforesaid, do hereby certify that Eliza Garrett, James Crow and Thomas G. Crow, and Charles D. Flaglor, in their own right as grantors, and the said Charles D. Flaglor and Frederick T. *Taylor*, who are personally known to me to be the same persons whose names are subscribed to the annexed agreement, appeared before me this day, in person, and acknowledged that they had signed, sealed, and delivered the said instrument of writing, as their free act and deed, for the uses and purposes therein expressed, and the said Charles D. Flaglor acknowledged that he had executed the same as the attorney in fact of said Letitia and Frederick T.
71 Flaglor. Given under my hand and official seal, this thirtieth day of May, A. D. 1851.

[L. S.] HENRY W. CLARKE, *Notary Public.*

No. 29,933. Filed for record 30 May, 1851.

And your oratrix charges that said deeds conveying said premises to said Letitia and Charles D. Flaglor, and said agreement dated May 29, 1851, were made in pursuance and intended execution of said decree of partition, and were designed to conform to its terms, and to give to the said Letitia and Charles D. Flaglor the same interests and estates, namely, for life to each, which in and by said decree were limited, expressed, and given to them, and to each of them, severally and respectively, and none other; and were intended, designed, and made to recognize and protect the interests and limitations of interest and estate which in and by said decree were limited, expressed, declared in favor, and given to the said children of the said Charles D. Flaglor, who should survive him; and so that, in the event of said children surviving him, the said estate, so limited and allotted to them would come to and vest in them as in and by said decree and the agreement of said parties contained in and shown by the said bill, proceedings, and decree aforesaid was and is provided and declared.

And your oratrix further states that the said Letitia Flaglor, Frederick T. Flaglor, and Charles D. Flaglor, with full
72 knowledge of the limitations in said decree in favor of the

ment and agreement for the division of said estate, and at the same time made and entered into the said written agreement accompanying the said deeds, which was signed and made as part of the same transaction, and was designed and meant to control, limit, and explain said deeds, being the same mentioned in said answers.

And your oratrix further states that on the 19th day of May, 1851, at the same time that said deeds from Eliza Garrett and James and Thomas G. Crow, referred to in said answers herein, and as part of the same act and transaction, the said Eliza Garrett and James and Thomas G. Crow, and the said Charles D. Flaglor and Letitia and Frederick T. Flaglor made and entered and duly signed, executed, and delivered a certain agreement in writing, in words and figures following, to wit: "Whereas the undersigned have simultaneously herewith deeded each to the other this day certain interests which we respectively possessed or may have been supposed to possess in the estate of Augustus Garrett, deceased, in order to secure more effectually each to the other the title to the respective lands in said deeds described, we hereby, however, declare said deeds to be subject to the following limitations, that is to say, the real estate deeded to Eliza Garrett is subject to the payment of one-half the debts and claims now existing and
69 unpaid against the said Augustus Garrett, deceased, and the lands deeded to James Crow and Thomas G. Crow are subject to the payment of one-third of the debts of said Augustus Garrett, now unpaid, and to two-thirds the specific cash legacies and annuities in the will of said Augustus Garrett mentioned, and the lands so deeded to Letitia Flaglor and Charles D. Flaglor are to be and are subject to the payment of one-sixth part of the debts and claims against the said Augustus Garrett, deceased, and to one-third of the actual cash legacies and annuities in said will mentioned, and to the whole and entire interest of the child and children and the descendant and descendants thereof Charles D. Flaglor, which him may survive, in said estate of said Garrett, which, under said will, such child, children, and descendant or descendants may have or at any time be entitled to; which said interest of such child or children or descendant is hereby declared and agreed to be charged upon the lands in said deed to Letitia and Charles D. Flaglor and Frederick T. Flaglor, husband of said Letitia, hereby assume to satisfy said interest of any such child or children or descendants thereof which they may be entitled to under and by the terms of said will, and to save and keep harmless the share and portions of said real estate so deeded to said Eliza Garrett, James Crow, and Thomas G. Crow from all claim and claims which any such child or
70 children of said Charles D. Flaglor may have or become entitled to under said will or the decree of any court now made or hereafter to be made.

In witness whereof we have mutually and interchangeably and hereto set our hands and seals, this 29th day of May, A. D. 1851.

(Sgnd.) ELIZA GARRETT. [SEAL]
(Sgnd.) JAMES CROW. [SEAL.]
(Sgnd.) THOMAS G. CROW. [SEAL.]
(Sgnd.) CHARLES D. FLAGLOR. [SEAL.]
(Sgnd.) LETITIA FLAGLOR, [SEAL.]
(Sgnd.) By her attorney in fact, Charles D. Flaglor.
(Sgnd.) FREDERICK T. FLAGLOR, [SEAL.]
(Sgnd.) By his attorney in fact, Charles D. Flaglor.

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

I, Henry W. Clarke, a notary public in and for said county in the state aforesaid, do hereby certify that Eliza Garrett, James Crow and Thomas G. Crow, and Charles D. Flaglor, in their own right as grantors, and the said Charles D. Flaglor and Frederick T. *Taylor*, who are personally known to me to be the same persons whose names are subscribed to the annexed agreement, appeared before me this day, in person, and acknowledged that they had signed, sealed, and delivered the said instrument of writing, as their free act and deed, for the uses and purposes therein expressed, and the said Charles D. Flaglor acknowledged that he had executed the same as the attorney in fact of said Letitia and Frederick T.
71 Flaglor. Given under my hand and official seal, this thirtieth day of May, A. D. 1851.

[L. S.] HENRY W. CLARKE, *Notary Public.*

No. 29,933. Filed for record 30 May, 1851.

And your oratrix charges that said deeds conveying said premises to said Letitia and Charles D. Flaglor, and said agreement dated May 29, 1851, were made in pursuance and intended execution of said decree of partition, and were designed to conform to its terms, and to give to the said Letitia and Charles D. Flaglor the same interests and estates, namely, for life to each, which in and by said decree were limited, expressed, and given to them, and to each of them, severally and respectively, and none other; and were intended, designed, and made to recognize and protect the interests and limitations of interest and estate which in and by said decree were limited, expressed, declared in favor, and given to the said children of the said Charles D. Flaglor, who should survive him; and so that, in the event of said children surviving him, the said estate, so limited and allotted to them would come to and vest in them as in and by said decree and the agreement of said parties contained in and shown by the said bill, proceedings, and decree aforesaid was and is provided and declared.

And your oratrix further states that the said Letitia Flaglor, Frederick T. Flaglor, and Charles D. Flaglor, with full
72 knowledge of the limitations in said decree in favor of the

said children of said Charles, and of the said limitation of a life estate to said Charles, did deliberately accept of, assent to, ratify, and confirm the said decree and proceedings in partition, and the provisions and benefits thereof, and did in like manner sanction, authorize, consent to, ratify, confirm, and approve the act of said Arnold & Lay, as their solicitors and attorneys, in entering their appearance in said court and cause, and in therein filing their said answers to said bill, and in consenting to said proceedings and decree, and that said Letitia Flaglor and Charles D. Flaglor, with like full knowledge of said decree and proceedings in partition, and of the effect thereof upon their several and respective interests under said will, did elect to accept, and did accept, receive, and have the benefit of said decree, and the limitations therein contained in their favor, namely, of a life estate in the said premises to said Letitia first, next of a life estate therein in him, said Charles, vested and to come into possession next after and upon the termination of said Letitia's life estate, to said Charles as being the whole and entire interest, estate, right, and title in or to said estate and premises, which, under said will, they, or either of them, had, or at any time might have, or claim to have therein, and for, in lieu, stead, and full satisfaction of, any other right, or claim of right, which
73 otherwise they, or either of them, had, or might have, under said will, in or to said devised estate, or to any part thereof.

And your oratrix further charges and insists that said Letitia, Frederick T. Flaglor, and said Charles D. Flaglor were in their lifetimes, and the said defendants herein and all those under whom they claim as their privies in estate, deriving title and claiming right to said privies by deeds made by said Charles, Frederick, and Letitia Flaglor, or either of them, subsequent to said proceedings and decree in partition so made and entered of record as aforesaid, are precluded and estopped by the said agreement for partition so recited in and shown of record as aforesaid, and by the knowledge, consent to, approbation, and acceptance of said decree and of the benefits thereof by the said Letitia, Frederick T. Flaglor, and Charles D. Flaglor, and by the said acts, conduct, election, choice, and proceedings in that behalf of said Letitia, Frederick T. Flaglor, and Charles D. Flaglor, as above set forth, from alleging, setting up, or in anywise pretending that said decree and proceedings in partition of the said circuit court were had and made in and by said court without the said court having jurisdiction of the person of or over Letitia, Frederick T. Flaglor, and said Charles D. Flaglor, or without service of process in said cause having been duly made upon said Letitia Flaglor, Frederick T. Flaglor, and
74 said Charles D. Flaglor, or that said Flaglor did not employ or authorize the said Arnold and Lay to appear before them or either of them, or to file said answer for them or either of them therein, or that said decree and proceedings even had, conducted,

made, or entered, and by said court, without the knowledge, consent, or authority of said Letitia, Frederick T. Flaglor, and Charles D. Flaglor, or either of them, before, at the time, or after the same were so had, made, and entered as aforesaid, or that the said Letitia, Frederick T. Flaglor, and Charles D. Flaglor did not at any time sanction, consent to, approve of, or ratify the said proceedings and decree and the said partition so thereby made as aforesaid, or that they did not approve, sanction, ratify, consent to, or authorize the filing of said bill by said Goodrich or the action of said Arnold and Lay in entering their appearance or in filing their said answer in said court and cause.

And your oratrix further states that it was never designed, meant, or intended by the parties to said arrangement and agreement for partition as aforesaid, that said Charles D. Flaglor or the said Letitia, or any other person, should have or exercise the right or power to sell the said lands so set off and allotted to said Flaglors for the term of their several lives, or the rights, interest, and estate therein, which, under said will and decree so made as aforesaid, was limited and allotted in remainder to the children of said Charles who should him survive.

75 And your oratrix further states and charges, that the said written agreement dated May 29th, 1851, which was made, entered into, and signed by the said several parties, cotemporaneously with said deeds of partition referred to in said answers herein of said defendants, was in the nature of and constituted as in favor of the infant children of said Charles D. Flaglor and as against the said Charles, Letitia, and Frederick T. Flaglor, and the said defendants, those under whom they or any of them claim said derived title as the privies in estate, claiming title under said Charles, Letitia, Frederick, or either them, a declaration of trust in favor of said children, co-extensive with the equitable interest and estate set off, allotted, and limited to said children in and by said agreement for partition and said decree, record, and proceedings in partition, reciting of record and evidencing said agreement, and that under and by virtue thereof said Charles, Letitia, and Frederick, and said defendants and all those under whom they claim as being privies of and claiming title under said Charles, Letitia, and Frederick, or either of them, were and are bound and concluded to hold said premises and whatsoever legal title thereto they may have at any time or in any manner or way acquired by, through, or under the said Eliza Garrett, James Crow, and Thomas G. Crow, the executors in trust of said will of said Augustus Garrett, subject and sub-
76 ordinated to the rights, equities, and estate of said children, as declared in and fixed by said decree of said circuit court, made at the May term, A. D. 1851, before referred to, and in trust and as trustees of said children, in manner and form and to the extent therein set forth and declared, namely, in trust that immediately upon and from the termination of the life estate vested in

said Charles D. Flaglor in and by said decree the said lands and premises and the rents, issues, and profits should belong to and absolutely vest in said children of said Charles D. Flaglor who should survive him, and inasmuch as the said Elizabeth Flaglor was the sole surviving child of said Charles, in trust for her and since her death for your oratrix as her sole devisee and heir-at-law absolutely and unconditionally in fee simple.

Your oratrix further states and charges that the deed of May 29th, 1851, from said Eliza Garrett to said Charles and Letitia referred to above, and in said answer, was not designed, meant, or intended by her to be in derogation from or in violation of the will of said Garrett, or in violation of the trust thereby in her jointly with said James and Thomas G. Crow reposed, to provide for and to hold said property in trust for the legitimate children of said Charles who should survive him, but the sum was solely meant, designed, and intended to release, free, and discharge the portion of said estate set off to the Flaglors from her own personal claims for
77 dower or otherwise, and to relinquish any legal interest or title which as statutory lien of said Garrett she might have therein while the same was undivided.

But your oratrix denies that it was either meant, designed, or intended by said Eliza Garrett, or that it would have been competent for her under the said will, to convey and vest in said Letitia and the said Charles, or either of them, the legal title of any part or portion of said estate, which she held upon the executory trusts created, and as provided by the said will; inasmuch as the said Letitia could in no manner and in no event, by the said will, and by the provisions thereof, ever become entitled to said lands and premises, or any part thereof, either at law or in equity; and inasmuch as in and by virtue of said will, and the sixth paragraph thereof, it was therein expressly provided and declared that the said Charles could in no event have a greater, other, or different estate or interest in said lands than a life estate; and inasmuch as it was therein and thereby provided and declared that unless he, the said Charles, should survive the said Mary Banks, Eliza Garrett, and Letitia Flaglor, he was not to have even a life estate vested in possession in any part of said lands.

And your oratrix charges and insists that the proper legal title and estate which as executrix under the said will the said Eliza Garrett had in said devised estate, upon and subject to said executory trusts therein declared, was not conveyed, passed, or
78 transferred by said deed, or otherwise, from said Eliza Garrett to said Letitia and said Charles, or either of them, as is surmised by said defendants in their answers filed herein.

But you oratrix charges that if through the improper wording of said deed or otherwise the legal title in said lands, which said Eliza Garrett had as executrix in trust under said will, was included in, affected by, or by said deed conveyed and transferred to said Letitia

and Charles, said legal title so thereby conveyed and transferred was, save as to the successive life estates of said Letitia and Charles, so far as the remainder limited to said children of said Charles was concerned, and to the extent thereof, subject to said limitations in remainder in favor of said children and in trust for them, and was so accepted, received, and held by the said Letitia and said Charles, in and during their lifetimes, and by said defendants herein, and those under whom they or any of *any of* them claim title, the privies in estate of said Charles D. Flaglor claiming title there to by deed from him subsequent to said decree in partition and said deed.

And your oratrix further states and charges that the said deed, dated May, 29th, 1851, made by said James Crow and Thomas G. Crow, and conveying the said premises, including those herein in question, to the said Letitia and said Charles D. Flaglor, was in like manner only designed and intended to affect, operate upon, and convey to said Letitia and Charles any personal right or claim
79 which the said James and Thomas, under said will and said decree, had or might, upon the contingencies therein expressed, namely, upon an indefinite failure of issue of said Charles, have, or become entitled to, by way of ultimate remainder or limitation, in and to the said premises, as by the said deed, reference thereunto being had, expressly appears; the said deed containing the following words: "The said parties of the first part convey and transfer to the said parties of the second part all reversionary interesst they may have in and to the above described premises under and by virtue of the will of the late Augustus Garrett, deceased."

And your oratrix charges and insists that said deed did not affect, operate upon, convey, or pass to said Letitia and Charles, or either of them, the legal estates and title which, under and by virtue of the said will, was vested in said James and Thomas G. Crow as executors in trust, thereby expressly designated and appointed and bound to execute the same and to carry into effect the purposes of said testator as therein contained in favor of said Charles D. Flaglor's surviving children, namely, to hold said lands and the share therein which should go to said Charles D. Flaglor in any event in trust for the children of said Charles who should survive him.

And your oratrix further charges that the contingent interest and limitation, by way of ultimate remainder in favor of said James and Thomas Crow, expired and ceased to exist upon the
80 said Elizabeth Flaglor surviving the said Charles, and by his decease, leaving the said child surviving him, on the 23rd day of December, 1858, upon and by which event the said limitation, estate, and interests of her, the said Elizabeth, under both the said will and said decree in partition became absolutely vested in her in fee simple.

And your oratrix further states and charges that the said Letitia and said Charles neither gave nor paid any valuable or other consideration for the said deeds from said Eliza Garrett and James

Crow and Thomas Crow, above referred to; that said deeds were, except as intended to carry out and conform to the said decree of partition, wholly voluntary; that, for any other object, use, or purpose, the same were wholly unauthorized and in direct violation and derogation of both the said will and all the provisions thereof, of said agreement for partition, and of said decree making partition as aforesaid, and of the right of said Elizabeth Flaglor under both said will and decree; that neither said will nor said decree gave nor was intended to confer upon, give to, or vest in either said Letitia or said Charles any power to sell, charge, incumber, or dispose of said premises or any part thereof; that said will forbade the said executors in trust to sell any part of said estate, even for the payment of debts or for any other purpose, but instead thereof, required said executors to provide for the payment thereof
81 from the rents and income of said estate, and if unable to pay them off from that source, authorized them to borrow money upon bond and mortgage, or otherwise; that by said will said executors were positively forbidden to make division of said estate before the death of said Mary Banks, Letitia Flaglor, and said Eliza Garrett; that by said will no power of alienation or anticipation of her right to a share of the income from said estate *estate* was given to said Letitia Flaglor, but, on the contrary, such right or power of alienation or anticipation was denied to said Letitia Flaglor; that, until the death of said Letitia as provided by said will and until all the debts of said estate should have been fully paid, said Charles had no vested right either in the *corpus* of said estate or any share or part of the income thereof, nor upon her death or upon the death of either said Eliza Garrett or Mary Banks, or both of them, or upon any other event or term happening before the death of all the said three persons, namely, Mary Banks, Eliza Garrett, and Letitia Flaglor, namely, which took place on the eighth day of February, A. D. 1856, could said Charles have nor had he under said will any vested estate, interest, or right whatsoever at law or in equity in said lands or any part thereof.

And your oratrix further states and charges that upon, from, and after said Letitia Flaglor's death, on the said 8th day of February, A. D. 1856, said Charles D. Flaglor had or could have, un-
82 der said will and the provisions thereof, no other estate, right, title, or interest in or to said estate and lands, or any part thereof, than to ask for the execution of the trust which said will vested in his favor in that contingency, namely, to require of said James and Thomas G. Crow that a division of said estate should then be made by them by allotting and setting apart to him a share of said estate and of the increase thereof, provided that by that time the debts of said Augustus Garrett should have been fully paid, in such manner that upon his death, and upon any of his said children surviving him, (which event took place on the 23d day of December, A. D. 1858,) by the said Elizabeth Flaglor surviving the

said Charles, the whole and the entire share or portion so allotted of said estate should go in remainder in fee simple absolute to her, the said Elizabeth Flaglor.

And your oratrix further states and insists that said James and Thomas G. Crow, the sole executors, who, by said will, were empowered or authorized to make any final division of said estate, had no power, right, or authority whatsoever, under said will and the provisions thereof, nor by or under said proceedings and decree in partition, to convey or transfer to said Letitia and Charles, or either of them, the legal estates and title in and to said lands, which in and by said will was vested in them as executors in trust to be held by them upon and subject to the executory trusts of said will; that
83 the only legal title to said lands which they could lawfully convey to them, the said Letitia and Charles, was an estate for the life of each of them, co-extensive with the estate and interests for the life of each, which in and by said decree of partition was allotted, given to, and vested in them severally, and no more.

And your oratrix further charges that if the said deed from said James and Thomas did in fact convey to them any other, different, or greater interest or estate than a mere life estate, the same was in consequence of the error and unskillfulness of the person who wrote the said deed, the same having been drafted and written either by the said James Crow or by the said Charles D. Flaglor, who were ignorant of law and of legal forms.

And your oratrix further states that no valuable consideration was paid or given by either said Letitia or said Charles to said James and Thomas Crow, or either of them, for said deed, that the same was made wholly without any consideration whatever, and was merely voluntary, except so far as the same was meant and designated to carry out and conform to the said decree in partition, and subversive of the objects, purposes, and trust of both.

And your oratrix further charges that if, through error or misprision of any kind, the proper legal title or estate in and of said lands embraced in said deed, which said James Crow and
84 Thomas G. Crow, as executors in trust of said will, held and then held subject to and upon the trusts thereof, was embraced, affected by, or by said deed conveyed and transferred from them, the said James and Thomas, to said Letitia and Charles, the said legal title and estate so thereby conveyed and transferred was, save as to and during the term of said successive life estates of the said Letitia and Charles, and so far as the remainder limited to and vested in the said surviving child or children of the said Charles was concerned, and to the extent thereof, subject to said limitation in remainder in favor of said children and in trust for them, and was so accepted, received, and held by the said Letitia and said Charles in their lifetimes, and by said defendants herein and all those under them or any of them claim, the privies in estate of said Letitia

and Charles D. Flaglor claiming title by deed from them made subsequent to said decree in partition and said deed.

And your oratrix further states that by virtue of said decree the said Charles D. Flaglor had and received a vested estate for life in and to said lands, constituting one sixth part so set off to said Flaglors in succession next in remainder, after the life estate of his said mother, ready to come into possession immediately upon the termination of her life estate; whereas under the said will and its provisions in that behalf, the said Charles had no estate, right, or interest whatever vested in him, but only a contingent and uncertain interest or equity first to a share of income of said estate upon the death of said Letitia happening before the partition of said estate and before the death of both said Eliza Garrett and Mary Banks, and second if he survived the said Letitia and said Eliza and said Mary, and the payment in full of the debts of the estate from the income thereof to a life interest in said estate.

85

And your oratrix charges that said decree in partition, and the partition thereby made and the limitation of interest and estate thereby given to said Charles, was beneficial to him in this, that it gave to and vested in him a vested estate for life, ready to come into possession on said Letitia's death, instead of a mere expectancy dependent upon the several contingencies aforesaid.

And your oratrix charges that the said Charles D. Flaglor accepted the said life estate and the said decree and the benefits thereof, and thereupon became and was in his lifetime bound, and the said defendants and all those under whom they or any one of them claim, claiming title to said premises by deed from said Charles made and executed subsequent to said decree, became and were bound, concluded, and estopped from impeaching, questioning, or denying said decree and the validity thereof, and from setting up or claiming as against your oratrix any other, greater, or different estate than in and by said decree was limited, given, and adjudged to him, namely, a life estate; and from denying, questioning, or impugning the right of said child of said Charles D. Flaglor surviving him to the said premises next in remainder after the said Charles' life estate, ready to come into possession immediately upon the termination thereof, and which vested in said Elizabeth in fee simple absolutely and indefeasibly on the death of said Charles happening on the 23d day of December, A. D. 1858, having the right, title, interest, and estate herein in controversy.

86

Your oratrix further states that said Charles D. Flaglor, at no time prior to the filing of said bill of review in 1853, claimed any greater estate or interest in said premises under said will than a life estate next after his mother; nor did he, prior to filing said bill of review, question or deny that his surviving child was entitled by the will to said premises in fee, nor that by the will said

premises were given in fee to said James and Thomas G. Crow in case his own legitimate child should not survive him.

Your oratrix further states that, in July, 1851, soon after said partition was made, the said Charles D. Flaglor applied to the surrogate court in and for Orange county, New York, where he and his said children lived, to be appointed their guardian, and thereupon such proceedings were had and orders made by said court that said Charles was, upon giving bond, appointed the guardian of his said children, being the same who were made parties to
87 said partition decree, that said order and appointment were never revoked or set aside, but the same remained in full force, and said Charles continued to be and act as such guardian to the time of his death; that in said petition the said Charles, among other things, alleged and stated of record that, by the will of said Augustus Garret, the said Elizabeth and Lucy Louisa had become entitled to the property set off to them in said partition by said decree; that the use or income of said property was by said will given to said Letitia and Charles during their lives, and after their deaths to said Elizabeth and Lucy Louisa, which petition was, on the 17th day of July, A. D. 1857, signed and sworn to by Charles before the surrogate of said court and filed for record therein. Your oratrix for greater certainty refers to the original and record of said petition, proceedings, and order of said court therein, appointing said Charles such guardian, and to a copy of the record of said proceedings and order duly authenticated as part of this amended bill.

Your oratrix insists that, by said sworn petition of record, his statements therein made on oath, and by the orders of said court therein made at said Charles' request, the said Charles in his lifetime was and the said defendants and all those under whom they claim, claiming title to said premises by, through, and under said Charles, were and are concluded, bound, and estopped from setting up, alleging, or claiming that, by said will or otherwise, said
88 Charles was entitled in fee to said premises or any part thereof, or had any other or greater interest or estate therein than a life estate; and from denying that said Elizabeth Flaglor, as his sole surviving child, upon his death was under said will entitled to said premises in fee simple.

And your oratrix further states that sometime after said decree, and on or about the seventeenth day of December, A. D. 1853, the said Letitia Flaglor and Frederick T. Flaglor, by their certain deed bearing that date, for certain considerations therein recited, conveyed unto the said Charles D. Flaglor those certain lots and parcels of land which were included in said decree for partition and therein and thereby set off to the said Letitia for her life, being, to wit: That part of the north half of block seventy-three in the school section addition to Chicago, which lies west of Eleventh street; and the west quarter of lots numbered (1½ eight (8) in block twenty-

one (21) in the original town of Chicago, being the life estate therein which said Letitia had under and by virtue of said decree of said circuit court for partition, it being expressly declared in said deed that the same was particularly intended to release to said Charles the life estate of the said Letitia in said property, as by said deed will with certainty appear, reference thereto being had, which deed was duly recorded on the *the* sixth day of February, A. D. 1854, in the office of the recorder of deeds, in said Cook
89 County, in Book of Deeds number ———, at page 405 thereof, whereof the said Godfrey A. Jessel, B. Losee, and said other defendants, before they severally bought, paid for, and received conveyances of title to said premises, had notice.

And your oratrix charges that said Charles D. Flaglor, by accepting and receiving of and from the said Letitia Flaglor the said deed of conveyance dated the 17th day of December, A. D. 1853, above referred to, whereby she expressly conveyed to him, for the consideration therein mentioned, her life estate in and to said premises therein described, which estate and interest she was solely entitled to, and had and claimed under and by virtue of said decree and proceedings in partition and the said partition so thereby made as aforesaid, and by having, receiving, and enjoying the benefit of said decree to and on the part of said Letitia, and her interests in said premises thereunder became and was in his lifetime bound and barred thereby and thereby concluded and estopped from questioning, impugning, or denying the said decree, proceedings, and partition, or the validity thereof, and the right of his said children as therein and thereby limited, expressed, declared, and adjudged in their favor, and that said defendants Jessell, Reid, and any
90 and all others claiming titles to said last-mentioned premises by deed or deeds from said Charles D. and Frederick T. Flaglor, and from said Letitia, or either of them, made subsequent to said decree of partition, were and are so bound, barred, estopped, and concluded in the same manner as said Charles from impeaching, questioning, or denying said decree and the validity thereof, and the rights of your oratrix, as therein and thereby expressed, limited, and adjudged.

And your oratrix further charges that said Benjamin Losee made said agreement referred to in said answers with said Charles D. Flaglor for the lease, purchase, and conveyance of the premises for the term in question, with notice that the said Charles had not the legal title thereto, and had no other than a life estate in said premises, and with notice of the said declaration of trust by said Letitia and Charles in favor of said Charles' children before mentioned, and of the rights of said children in said premises under the express limitations of said decree of partition.

And your oratrix charges that both said Losee, Jessell, and Reid, and said other defendants who claim title under them or either of them, had notice of said proceedings and decree in partition before

they agreed to lease or buy said premises or any part thereof before they received any lease or deed of conveyance thereof
91 mentioned and referred to in said answers, and before paying the whole or any part of said rent or purchase-money therefor, and had notice that said Elizabeth Flaglor was but an infant of tender years and was incapable by reason thereof of taking care of protecting her interests in the premises, and that said pretended deed was conveyed and transferred of said premises were made in fraud and in derogation of and from her just and lawful rights in that behalf.

And your oratrix charges that the pretence in said answers that said Charles D. Flaglor made said lease or sale and conveyance of said premises to said Losee in order to defray the portion of debt of said estate of Augustus Garrett charged thereon in and by said decree of partition as suggested in said answer, is wholly untrue.

And your oratrix further charges that said Losee, Jessell, Mather, Curtis, and Reid, and the other defendants herein claiming through or under them or either of them, before paying or agreeing to buy said premises, before becoming in any wise interested therein, before paying any part of the purchase-money thereof, and before receiving any one of said leases or conveyances mentioned in said answers, had notice of said decree of partition of said circuit
92 court and of the rights of said Elizabeth Flaglor thereunder, and that neither said Letitia, Frederick T., Charles D. Flaglor, nor the said executors of said estate could lawfully sell said property or any part thereof, either to pay said debts or any other purpose, but that said sale was expressly forbidden by said will.

And your oratrix further states and charges that said several deeds set up and relied upon in said answers as conveying title to said premises to said defendants, were all, except so far only as they affected the said life estate therein of said Charles D. Flaglor and of said Letitia Flaglor, and so far as they or either of them affected or were meant to affect the interest in said premises which, under said will, decree, and declaration of trust the said Elizabeth Flaglor had therein, were unauthorized, illegal, fraudulent, and void.

And your oratrix further states that said improvements alleged to have been made by said Losee, Jessell, and said defendants upon said premises, were, if any such were at any time made by them, made after the death of said Charles D. Flaglor and after his life estate therein had terminated, the said Losee and Jessell, and those claiming under them or either of them, well knowing that said Charles D. Flaglor's life estate had ceased, and that said premises and the title thereto in fee had vested in and wholly belonged to said Elizabeth Flaglor, and that she was an infant of tender years.

93 And your oratrix charges that neither said Losee, nor said Jessell, nor said defendants claiming under him was or are entitled as against your oratrix, as the executrix and devisee of said

Elizabeth Flaglor, to be allowed compensation for any of said improvements; and she charges that in making said improvements and in paying taxes on said premises since the death of said Charles D. Flaglor, the said Jessell and said other defendants acted with notice of the facts herein set forth touching the title and rights of said Elizabeth Flaglor in contempt and disregard of said rights and title of said Elizabeth Flaglor, and solely in order and with the intention to wrest from her and to deprive her of, by fraudulent, illegal, and wrongful means and practices, her just rights and title in and to said premises.

And your oratrix further charges that the rents and profits of said premises had and received by, of said defendants and those under whom they claim, during the said life estate of said Letitia and Charles, and prior to Decr. 23d, 1858, exceeded in amount the sum paid by said Losee and Jessell for the purchase of said premises or for rent, taxes thereon, and all just allowances which the said defendants are entitled to in respect of said improvements.

And your oratrix further states that solely in consideration of the agreement and consent to and acceptance of said decree and partition made in the said circuit court, and on the part of the said Charles D. Flaglor, the said executors, to wit, on the 27th day of
94 May, A. D. 1857, gave and delivered to said Charles and to said Letitia, for whom he acted in that behalf, the possession of said premises, and permitted him to enter into the receipt and enjoyment of the rents, issues, and profits thereof.

And your oratrix further charges that if said executors had literally obeyed the requirements of said will as to the time of making said partition, and if said Charles had not agreed to said decree, and to the partition thereby made, he never would have entered into possession of said premises, nor would have had vested in him any estate therein, nor any right to the possession thereof, nor would he have been entitled at any time before the 23rd Decr., 1858, when he died, nor to demand that a partition of said estate in his favor should be made.

And your oratrix further saith that the said Lucy Louisa Flaglor departed this life some time in May, 1852, long before said bill of review was filed, an infant of tender years, and that said Elizabeth Flaglor was at the time of filing said bill of review an infant of tender years, and did not attain her majority until the 21st day of March, A. D. 1867, some time after the original bill herein was filed.

And your oratrix further saith that said decree of said circuit court, made in 1854, upon said bill of review, was fraudulent, illegal,
95 null, and void as against the said Elizabeth, was solely devised, procured, and entered by and through the fraud, false pretences, and improper practices of one Wadhams, instigating the said Charles thereto, and by his attorneys in that behalf, and the same has since been, as hereinafter shown by the judgment of the supreme court, reversed.

Your orator expressly charges that neither said Elizabeth Flaglor nor her guardian was served with process or lawfully notified of said proceeding on said bill of review; that said court had not jurisdiction of her in said cause, and that its said decree was therefore void.

And your oratrix further expressly denies that any of said defendants, or those under whom they claim, took possession of said premises, made improvements, or paid taxes or assessments thereon in good faith, but she charges that each and all of their said acts in that behalf had been intended, contrived, and done through covin, fraud, and in bad faith, and solely with the object and in order wrongfully to deprive the said Elizabeth Flaglor of her estate and rights in said premises.

And your oratrix further states that in and by said bill of review mentioned in said answers, said Charles D. Flaglor expressly averred, alleged, and set forth of record that on the 9th day of May, 1851, the said Frederick T. Flaglor, Letitia Flaglor, and Charles D. Flaglor filed their joint answers to said bill for partition, admitting the allegations thereof, and that on the 9th day of May, 1851,
96 due proof was made in said court; that due notice of the pendency of said bill was given to all the defendants to said bill, and due publication thereof made, according to the statute in such cases made and provided.

And your oratrix further states and charges that neither the said Charles D. Flaglor nor said Letitia nor said Frederick ever denied, disputed, or questioned the said proceedings and decree in partition or the validity thereof, or the acts of said Arnold & Lay in having filed the said answer for them, but the said Charles, Letitia, and Frederick always recognized, sanctioned, and approved of the said decree and proceedings, and the said acts of said Arnold & Lay, and paid them the sum of one hundred dollars for their services in the premises.

And your oratrix charges that said Letitia, Frederick, and
97 said Charles were in their lifetime, and said defendants, and any and all persons under whom they, or any of them, claim as their privies as aforesaid, are estopped and concluded by the said allegation in said bill of review contained, and by the said acts, recognition, and conduct of said Letitia, Frederick, and Charles, to deny that he, said Charles, Frederick, or Letitia, did file their joint answer to said bill, admitting the allegations thereof, or to deny that due proof was made in said court, that due notice of the pendency of said bill was given to all the defendants thereto according to the statute, or to deny the authority of said Arnold & Lay to file the said joint answer of said Charles, Frederick, and Letitia, or to deny that said decree was entered by and with the consent of said Charles thereto, or to question or deny that said court had jurisdiction of said cause, or of said Letitia, Frederick, or Charles, or to impugn, question, or deny the validity of said proceedings and decree.

And your oratrix further states that in the month of September, 1851, the said executors of Augustus Garrett, at the request and by

the procurement of said Charles D. Flaglor and said Letitia
98 and Frederick, and in pursuance of an unlawful, corrupt, and fraudulent agreement in that behalf with said Charles, Frederick, and Letitia, applied to the Cook County court for and obtained a pretendd order of said cour t for the sale of the north half of block sevente-three, in the school section addition to Chicago, and the west half of the east half of lot two (2) in block thirty-*one* (31) in the original town of Chicago, being part of said premises limited in remainder to said children of Charles D. Flaglor, for the payment of debts due for said estate upon the untrue allegation that such sale of said premises was necessary for that purpose, which said proceedings were wholly unnecessary, in violation of said will of Garrett, in fraud of the rights of said children, under both said will and decree of partition ; that with full knowledge that said Arnold & Lay had filed said answer in the partition suit for himself, and of the effect thereof, the said Charles D. Flaglor, in September, 1851, employed said Arnold & Lay to appear as counsel for himself, his father, and mother, and file his and their answers thereto.

And your oratrix states that said Arnold & Lay did thereupon file the joint answer of said Charles, Frederick, and Letitia, consenting to the said application, as appears of record, whereto for certainty reference is had.

And your oratrix states that said Charles was, upon his own application, appointed guardian ad litem for said Elizabeth and
99 Lucy Louisa, his children, who were made parties to said proceeding and application ; and as such filed their answer to said petition, written and drafted by said Arnold & Lay as solictors.

And your oratrix charges and insists that said Charles D. Flaglor thereby recognized and sanctioned the prior acts of said Arnold & Lay in said partition suit, and thereby recognized the interest of said children in said premises under and by virtue of said decree as therein fixed, adjudged, declared, and the force and effect of said decree, as by the record of proceedings of said county court in that behalf, reference being thereto had, will more fully appear.

And your oratrix further states that the said Elizabeth Flaglor some time in the year 1866 sued out a writ of error from the Supreme Court of Illinois, returnable to the aforesaid term thereof A. D. 1866, to reverse and set aside the decree or order of said Cook County Circuit Court, made in 1854, upon said bill of review of said Charles D. Flaglor referred to in said answer, to which writ of error the said Edward Jessell, claiming through said Losee title to the premises herein in question under said Charles D., Letitia, and Frederick T. Flaglor, was with certain others made parties; that by his counsel he appeared in said supreme court, and pleaded in bar of said writ of error among other things the record of the entire proceedings, bill, answers of said Charles D. Flaglor,
100 Letitia Flaglor, and Frederick T. Flaglor, the master's report,

the commissioners' report, the interlocutory and final decrees, and orders of said circuit court in partition; and in and by the said plea did expressly aver, allege, and say, "that afterwards, to wit, on the 9th day of May in the year last aforesaid, thereby meaning the year A. D. 1851, the said defendants, Frederick T., Letitia, and Charles D. Flaglor, filed in said court their certain answers to the said bill in the words and figures following, to wit: The answers of Frederick T. Flaglor and Letitia Flaglor, wife of said Frederick T. Flaglor, and Charles D. Flaglor to the petition of Eliza Garrett, James Crow, and Thomas G. Crow, filed in the Cook County Circuit Court on the chancery side thereof."

These defendants, Frederick T. Flaglor, Letitia Flaglor, wife of the said Frederick T. Flaglor, and Charles D. Flaglor, saving and reserving to themselves all manner of exception to the many errors and insufficiencies contained in the said petition, for answer thereto say that the statements as made and set forth in the said petition are true to the knowledge and belief of these respondents, and consent and pray that the prayer of the said petition may be granted.

FREDERICK T. FLAGLOR,
LETITIA FLAGLOR, AND
CHARLES D. FLGLOR,
By their Solrs., ARNOLD & LAY.

ARNOLD & LAY, *Solrs.*

101 And your oratrix further insists and charges that the said defendants did thereby expressly aver, allege, and admit of record in said supreme court that the said Cook County Circuit Court had jurisdiction of the persons of said Letitia, Frederick T., and Charles D. Flaglor in said suit for partition, and that said Letitia, Frederick T., and Charles D. Flaglor did appear therein, and did file the said answer, and that said Arnold & Lay were well authorized and empowered by them and each of them to file said answer for them in said court and cause.

And your oratrix charges and insists that defendants are bound by their said averment and allegations concluded and estopped to aver the contrary or to dispute the truth thereof.

And your oratrix further states and charges that if in point of fact said decree in partition had been void for want of jurisdiction over the person of said Charles D. Flaglor, and that said Charles D. Flaglor had not authorized said Arnold & Lay to file said answer for him therein as in said answer of said defendants herein is now for the first time pretended, said defendants acting under the advice of learned counsel would have pleaded that fact in bar of the right of said Elizabeth Flaglor to have said decree of 1854 reversed, and in bar of her right to have said decree of 1851
102 making said partition left and declared by the supreme court of the state to be in full force, and to be binding upon all the parties thereto or affected thereby as being absolute and irreversible by law.

And your oratrix further saith that to said plea so by the said defendants pleaded in said supreme court, and cause aforesaid in bar of said writ of error, the said Elizabeth Flaglor did in and by her replication thereto set up, allege, and rely upon the matter of fact therein alleged, pleaded, and averred as aforesaid by said defendants, namely, that the said record, proceedings, and decree of said circuit court, at the May term thereof, A. D. 1857, between the said Eliza Garrett, James Crow, and Thomas G. Crow, complainants, and Letitia Flaglor, Frederick T. Flaglor, and Charles D. Flaglor, Elizabeth Flaglor, Lucy Louisa Flaglor, and Mary Banks, defendants, set out in their said plea as a bar as against the said Charles D. Flaglor in his lifetime, and said defendants herein and therein claiming title under and derived from him subsequent to said decree of said circuit court of May, A. D. 1851, in partition, to any such claim or title under said will of Garrett in favor of said Charles D. Flaglor and his privies in estate, if any such claim, title, right, or interest in said estate ever existed under the said will and by the provisions thereof as was in said plea alleged, set up, and claimed
103 and by the said defendants now therein is surmised, claimed, alleged, and set up, and the said Elizabeth Flaglor did further in and by her said replication to said plea of said defendants insist and say that the said defendants as the privies in estate and interest under and claiming title to said lands through the said Charles D. Flaglor, by title acquired from him since the making and rendition of said decree, were and are debarred and estopped from claiming, setting up, or insisting upon as against her any title to or estate in said lands other than or different from that which in and by said decree of partition is and was upon the express prayer and consent of said Charles D. Flaglor found, declared, and adjudged by said court in and by its said decree to be in him, the said Charles D. Flaglor, namely, a life estate next in remainder after the said life estate of said Letitia Flaglor, as expressed in the said decree under the said will, and that the said agreement then and there had, made, and entered into by and between the said Eliza Garrett, James Crow, and Thomas G. Crow, and the said Charles D. Flaglor, Letitia Flaglor, and Frederick T. Flaglor, her husband, being all the persons claiming title under said will to the said estate of the said Augustus Gaarett for and touching the division
104 and partition of said estate among them recited of, contained in, and shown by the record, by the bill of complaint in said partition suit, the answer of Charles D. Flaglor, Letitia Flaglor, and Frederick T. Flaglor, of the defendants thereto, and found by the said circuit court, upon reference to the master, and his report thereon, to be beneficial, right, and just, so far as the rights of her, the said Elizabeth Flaglor, the sole child of said Charles D. Flaglor, who survived him, were concerned; and the decree of said court in said partition suit, based and founded thereon as set out in said plea of said defendants, are and were a bar to the right, estate,

and interest set up by said defendants in said plea under the will of said Augustus Garrett, if any such right ever existed; and the said defendants as such privies in estate and interest of said Charles D. Flaglor, are and were thereby estopped and barred from setting up or relying upon such pretended rights in manner and form aforesaid; and are and were thereby estopped and concluded from denying, questioning, and impugning the right of said plaintiff in error, Elizabeth Flaglor, and her title and estate in said premises, as declared and adjudged in and by said circuit court of the May term, A. D. 1851, as by the record of proceedings in said cause by the said supreme court will appear, reference thereto being had.

And your oratrix further saith that said Edward Jessel and said defendants the other defendants in this cause,
105 as defendants in said cause in said supreme court, by their counsel in that behalf, rejoined to the said replication of said Elizabeth Flaglor to their said plea, and for rejoinder thereto said that the said defendants ought not to be precluded and barred as in said replication was prayed, because they said that the decree in said replication mentioned was reversed and set aside as in said plea stated and as shown by the answer herein, and as appeared from the record in said cause, wherefore they prayed judgment, &c.

And your oratrix further states that thereupon the said Elizabeth Flaglor sur-rejoined, alleged, and pleaded that as to the rejoinder of said defendants to said replication, the same was insufficient in law and that the said defendants ought to be precluded and barred as in said replication prayed, showing and alleging for cause of demurrer to said rejoinder that said alleged reversal of said decree of May, 1851, by the court below was in error, and was assigned for error in said supreme court in said cause upon the record therein, and was unauthorized and contrary to law and as against the said Elizabeth Flaglor was fraudulent and void upon the face of the record, wherefore she prayed judgment of the said supreme court that said defendants be precluded and debarred as in said replication was already prayed, as above shown.

And your oratrix further states that upon said issues as aforesaid made up and joined between the said Elizabeth Flaglor and
106 the said defendants, and by them submitted to the said Supreme Court of Illinois, after arguments of counsel had thereon, the said court did adjudge, decree, and order that the said decree of said circuit court of April, 1854, made at the instance and upon the prayer of said Charles D. Flaglor, in said bill of review contained, should be annulled, reversed, and set aside, and did in and by their judgment and final decision annul, reverse, and set the same aside, and did decide, declare, and adjudge that the said decree of forfeiture of partition of said estate made by the said circuit court in May, 1851, was made and entered by the said circuit court at the express prayer and instance of said Letitia, Frederick T., and Charles D. Flaglor, and that they were precluded, debarred,

and estopped; and the said defendants, as their privies in estate, claiming title to said lands from them, the said Letitia, Frederick T., and Charles D. Flaglor, by act and deed subsequent to the entry and making of said decree, were thereby in like manner precluded, barred, and estopped from questioning, impugning, or denying the said decree as in and by the record of said judgment and proceedings before said supreme court upon said writ of error and the opinion of said court thereon will more fully and certainly appear, reference thereto being had.

And your oratrix doth further state, insist, and charge
107 that the record, proceedings, judgment, opinion, and decree of said supreme court at the said April term, A. D. 1866, between the said Elizabeth Flaglor, plaintiff in error, and the said defendants, with other defendants in error, are a bar as against the said defendants to their setting up, alleging, or claiming that said decree of said circuit court of May, 1851, was had and made or entered by said court without the said court having jurisdiction of the persons of the said Letitia, Frederick T., and Charles D. Flaglor, or or either of them, or that the same was had, made, or entered by said court without the consent of said Letitia, Frederick T., and Charles D. Flaglor, or that the said answer of said Letitia, Frederick T., and Charles D. Flaglor to said bill of complaint therein was filed by said Arnold & Lay without authority from them, the said Letitia, Frederick T., and Charles D. Flaglor, or that said decree was void, illegal, or without force as against the said Letitia, Frederick T., and Charles D. Flaglor, to bind them, and each of them, and all others, their privies in estate, including the said defendants in the premises.

And your oratrix further states that in and by the said plea pleaded by the said defendant Godfrey Jessel and the other said defendants claiming under him in bar of the errors assigned by said Elizabeth Flaglor in said cause depending in said Supreme Court of Illinois, and by her relied upon for the reversal of the said
108 pretended decree of said circuit court of 1854, upon said bill of review, being the same plea hereinbefore referred to, the said Godfrey Jessell and the said other defendants, by their attorneys in that behalf did expressly aver, allege, plead, and set forth among other things in words as follows, to wit: "And these defendants further aver that afterwards, to wit, on the 16th day of April, 1853, one Charles D. Flaglor, a devisee under the said will of the said Augustus Garrett, filed in said Circuit Court of Cook County his bill of complaint, being a bill of review of the decree entered in the above cause, which bill is the one set forth in the record in the above-entitled cause, upon which bill of review the following proceedings were afterwards had in said court as set out in the record herein."

Your oratrix charges that said defendant Jessell did thereby allege, admit, and plead by record the fact that the bill of review re-

ferred to in said original and amended answers herein of defendants, Jessell, Reid, Mather & Curtis, was filed by said Charles D. Flaglor, being the same person referred to in the original and amended bill herein and in said answers of said defendants.

And your oratrix further states that said Elizabeth Flaglor, by her pleadings in said court and cause upon said writ of error, did expressly aver, allege, and admit by record therein the fact that
109 said bill of review was filed by said Charles D. Flaglor.

And your oratrix doth further allege and charge that upon the said joint averment and admission of said Elizabeth Flaglor, and by said Godfrey A. Jessell, Catharine Reid, and said other defendants of said fact that said Charles D. Flaglor did file said bill of review of record in said court and cause, the said supreme court did, to wit, as herein already stated, give judgment, and did thereby decide, adjudge, and declare that said bill of review was filed by said Charles D. Flaglor, and that the same was filed by him contrary to law, which judgment and decree of the said supreme court is still in force and not reversed.

And your oratrix charges and insists that the said Godfrey A. Jessell and the said other defendants, claiming under him as his privies in estate and law in that behalf, is and are bound, barred, concluded, and estopped by the said pleadings and averment of said Jessell, and by the said judgment and decree of the supreme court thereby from denying that said Charles D. Flaglor did file said bill of review, and from denying, questioning, or gainsaying the said fact, and from in any manner alleging the contrary thereof.

And your oratrix insists and charges that the facts aforesaid, relative to the filing of said bill of review of said Charles D.
110 Flaglor, was on and by said judgment of said supreme court adjudicated, determined, and finally settled, and that said defendants are estopped by said adjudication from pretending aught to the contrary.

And your oratrix prays that the said defendants Godfrey Jessell, Catherine Reid, Joseph H. Mather, Theodore H. Curtis, and James and Thomas G. Crow may be required to answer the amended bill, but without oath, and that your oratrix may have the relief already prayed for in the original bill herein, and that it may be declared, adjudged, and decreed by this honorable court that the said Elizabeth Flaglor did, upon the death of said Charles D. Flaglor, as his sole surviving child, became entitled in fee simple to the said premises herein in controversy, namely: Lot number twenty-five (25), in block nine (9), in Fort Dearborn addition to Chicago, and to the rents, issues, and profits thereof, and that your oratrix as her executrix, heir-at-law, and sole devisee is so entitled to the same; that said defendants James Crow and Thomas G. Crow, the surviving executors and trustees of said Augustus Garrett, may be ordered to convey to your oratrix the legal estate and title of and to said premises claimed by said other defendants, and that said

other defendants be ordered, required, and decreed to release, quit-
claim, and deliver and surrender to your oratrix the said
111 premises and the possession thereof, and to account for and
pay over to your oratrix the rents, issues, and profits arising from said premises from the said 23d day of December, A. D. 1858, until now, and until entry of the final decree hereinafter, deducting therefrom such reasonable amounts paid for taxes, assessments, and needful repairs as shall be according to law and equity, and that your oratrix may have such further, other, or different and better relief in and touching the premises as the circumstances of her case shall seem to require, and as in duty bound she will ever pray.

LUCY C. FLAGLOR.
By her solicitor, ARTHUR W. WINDETT.

ARTHUR W. WINDETT,
Complainant's Solr.

112 In the Superior Court of Cook County. In Chancery.

LUCY C. FLAGLER.

Interrogatories to be administered to John W. Brown, Daniel T. Weed, Lemuel W. Edwards, Simeon Bradley, Benjamin W. Bradley, David N. Bradley, William Barnes, and Charlotte T. Flaglor, of Orange County, and Odell Gardner, of Rockland County, in the State of New York, witnesses to be examined on the part of complainant in the above-entitled cause.

Interrogatory 1. Each of the above-named persons having been duly sworn, will please state his name, age, place of residence, and occupation.

Intery. 2. State whether you know Letitia Flaglor, Frederick T. Flaglor, her husband, and Charles D. Flaglor, their son, formerly of said Orange County; if yea, state how long you knew them severally and respectively, and how well you were acquainted with them and each of them.

Int. 3. The witness John W. Brown is particularly asked to state whether, in 1849, 1850, or 1851, or at any time before or after
those years, he was or acted as counsel for said Charles D.
113 Flaglor or his said father or mother; if yea, in respect of
what business or subject?

Q. 4. State whether Charles D. Flaglor or his father or mother, ever consulted or advised with you professionally or otherwise in relation to the will of Augustus Garrett or the construction thereof, either as affecting their interests, or in relation to the interest or share of said Charles or his children under said will; if so, who consulted you, at what time, or times, and for what purpose, and please state whether you knew said Augustus Garrett in his lifetime.

Q. 5. State whether you ever saw, read, or examined the will of said Augustus Garrett or a copy thereof, or were ever informed, and if so by whom, of the nature and contents of said will as affecting the interests of said Flaglors or any of them? Please answer fully and particularly.

Q. 6. State whether in 1850 or 1851, or at any time before or after those years you formed, had, or expressed any opinion as to the construction or meaning of said will as affecting or in relation to the interest of said Charles and his children under the same; if yea, state what opinion was and the grounds thereof.

Q. 7. State whether you ever at any time entertained or expressed to said Charles D. Flaglor, or anyone else, the opinion that under said will or under a proper legal construction thereof, said Charles D. Flaglor was entitled to an estate in fee simple in any of the property devised by said will; or that his children were or were not entitled thereto; or that said Charles had the right or power under the will to sell the same in fee, clear of his children's claims.

Q. 8. The witnesses named in the commission will each of them state whether they ever heard the said Charles D. Flaglor speak about the will of said Garrett; if so, go on and state all that he said about said will, and on what occasion or occasions they severally heard him speak about said will.

Q. 9. State what you know, if anything, about said Charles claiming any under said will for himself or his children or mother; if he at any time made any such claim, go on and state fully to the best of your recollection what interest he claimed for his mother, what for himself, and if anything for his children, and all that he said from time to time upon that subject; stating if you can what led or induced him to make such claim or claims, or to speak of the same, and giving in each instance the words and language made use of by said Charles to the best of your remembrance.

Q. 10. State if you ever heard said Charles find fault with said will, or with any of the provisions thereof, or if you ever heard him blame any person for the way said will was made, or for any other cause connected with said will; if yea, go on and
114 state all that he may have said upon that subject, what fault, if any, he found with said will, and whom he blamed, if anyone, for the way that said will was made or for any other cause connected with said will.

Q. 11. State whether you ever heard said Charles say anything about having the power to sell the property claimed by him under said will, or about making any sale or sales thereof; if yea, go on and state all that he said upon that subject, and how he came to make such statements.

Q. 12. State whether you ever heard said Charles or his mother say what were their interests under the said will, as contracted with each other; or how or to whom the property would go or

descend after Charles' death; or what the provisions of the will were in that regard, giving as nearly as you can the words employed by each.

Q. 13. State whether you ever heard said Charles speak of his children having any interest under said will, or whether he made any statement as to whether the interest of said children could or could not be affected by his selling and conveying the property, and what reason or reasons he assigned therefor; if yea, state fully all that he said about it and what led him so to speak.

Q. 14. State if you ever heard said Charles claim to own said property in fee or otherwise; if so. how otherwise, or if you ever heard him deny that the same in fee belonged to his children under the will; if yea, go on and state all that he ever said upon that subject, as far as you can recollect the same.

Q. 15. State if you ever knew of said Charles conveying any of the property under the will of his father or to any other person or persons, or of your pointing out to him the consequence of his so doing upon the interests of his children, and what he said to you in reply; if yea, go on and state fully all that he may have said to you.

Q. 16. State what, if anything, you know about Charles Flaglor's having obtained a settlement or partition of the Garrett estate in the spring of 1851, or whether you heard him or his father or mother at that or other time say anything about such settlement or partition being made; or about how or by what means the same was made, and what interest was thereby given to Letitia, Charles D. Flaglor, or his children respectively, stating in your answer to each branch of this interrogatory in full, all that you heard said Charles or his parents say about the matter herein enquired of.

Q. 17. Speak whether you ever heard said Charles speak of being satisfied with said settlement or partition; if yea, relate fully all that he said upon the subject.

Q. 18. State whether you ever heard said Charles say anything about having attorneys in Chicago in the business of making

said partition or otherwise; if yea, state in full all he may have said in your hearing about such attorneys, whether in praising or blaming them for what they had done. State if you can the names of such attorneys. Were they Arnold and Lay?

Q. 19. The witnesses Gardner and Barnes are particularly interrogated whether they ever heard said Charles say anything about the sale or conveyance of any property to Wadhams and Moses or Joy, or about what interest or estate he had sold or conveyed to them or either of them, how or what kind of deed or deeds were given; and the consideration for or motive of the transaction in question; if yea, state fully all that he said upon the subject, or respecting each branch of this interrogatory.

Q. 20. The witnesses severally named in the commission will state whether they ever heard Charles or his mother speak of em-
1122 ploying lawyers in Chicago to get a partition made, or about having a suit with the executors for a partition, or about paying counsel fees, and state when such statements, if any, were made, and allthat was so said.

Q. 21. If you know of any other matter, cause, or thing not herein particularly inquired of, or pertaining to the subject of this suit, or any of the above interrogatories, or of any of your several answers, and which may be beneficial to the best of your knowledge, remembrance, and belief based on knowledge, or remembrance thereof, the same as if fully and distinctly interrogated in relation thereto.

1125 ANSWERS OF DANIEL T. WEED.

A. to Q. 1. Daniel T. Weed, am fifty years of age, reside in town of Newburgh, Orange county, N. Y., am a farmer.

1126 A. to Q. 2. I knew Letitia Flaglor, Frederick T. Flaglor her husband, and Charles D. Flaglor their son, knew them all intimately from the time I was fifteen years of age, lived within a few rods of them for a long time, and saw them nearly every day.

Interrogatories third, fourth, fifth, sixth, and seventh, addressed to John W. Brown alone.

A. to Q. 8. Have heard Charles speak about the will of Augustus Garrett a number of times after his uncle's death; Charles told me the property was divided between Mrs. Garrett, the Crow family, and the Flaglors. That Mrs. Garrett had one half, the Crows a life estate in one quarter, and the other quarter was given to the Flaglors; that his mother had the use of it during her life, then it went to him for his life, and after his death to his children; can't state any particular occasion when Charles told me this; I used to endorse his notes quite frequently, and we talked about the will, and the way the property was left. I took
1127 security from Charles for my endorsements, and in that way I learned from him about the provisions of the will.

A. to Q. 9. I have heard Charles claim an interest under the

will for himself, his children and his mother, as I have stated in answer to the preceding interrogatory. He never claimed anything more than a life interest in the property after his mother, until after he said there had been a settlement, and then he told me that the property, or some of it in Chicago, was given to him by the court, and he owned it absolutely. Never said anything about his children's interest after he spoke of the settlement.

A. to Q. 10. I never did.

A. to Q. 11. After he told me there had been a settlement, he claimed that he had power to sell the property, never before that. I knew nothing of his making any sale or sales thereof. The way he came to talk to me about having the power to sell,
1128 was in our conversation about the security he was to give me for endorsing his notes.

A. to Q. 12. Heard Charles and his mother both say, a number of times, that ¼ of the Garrett estate was given to his mother by the will for life, that after her death it was to go to Charles for his life; and after Charles' death it would go to his children. But after the settlement I have spoken of, Charles said he owned the property and had given a mortgage on it to his father for $20,000, and had secured his mother; it was after that that I remember he spoke of his children's interest in the property.

A. to Q. 13. Heard him say the property would go to them after his death. Never heard him say how their interests would be affected by his selling the property.

A. to Q. 14. Never heard him claim to own the property in fee until after the settlement; he said it was his to do as he pleased
1129 with, his absolutely; never used the words "in fee" that I recollect; never heard him deny that the same belonged to his children in fee.

A. to Q. 15. I know nothing of Charles conveying any of the property under the will to his father or any other person. He said he had mortgaged to his father for $20,000. Never spoke to him about the conveyances of his selling the property upon his children's interest.

A. to Q. 16. In or about 1851 Charles told me they had a settlement of the Garrett estate. I think he said something about a partition suit. Said it was settlement by the court; that Mrs. Garrett, the Crows, himself, and his father and mother had all agreed to it. Don't think I ever heard Charles' father or mother speak of it. Charles said he got property worth $40,000 or $50,000, that he gave his father a mortgage for $20,000, as near as I can recollect, and that he secured his
1130 mother; did not say how. Never said anything about his children in connection with such settlement. That is about all I recollect of hearing Charles say about it. He always claimed to own the property absolutely after the settlement.

A. to Q. 17. He always appeared satisfied with the settlement. I never heard him say he was dissatisfied.

A. to Q. 18. Yes; heard him speak of having attorneys in Chicago a number of times; he always praised them; said they were superior to any lawyers about here. I think he said the name of one of them was Lay; can't recollect the other.

Interrogatory nineteenth addressed to Gardner and Barnes alone.

A. to Q. 20. Yes; heard Charles speak of having attorneys in Chicago about settlement. Can't recollect what was said except that they were the best lawyers he ever had anything to do with; that counsel fees were steep; never heard anything about suit with executors; said they had a partition suit, but did not say the executors were parties to it.

A. to Q. 21. I have no other knowledge of the matters in controversy in this suit.

DANIEL T. WEED.

1131 ANSWERS OF JOHN W. BROWN.

A. to Q. 1. John W. Brown; am seventy-four years of age; reside in town of Newburgh, Orange county; am out of business.

A. to Q. 2. I knew Frederick T. Flaglor for a number of years; can't say how many; knew him well, and saw him frequently; never had any acquaintance with Letitia Flaglor or Charles Flaglor.

A. to Q. 3. I did not act as counsel for Charles D. Flaglor or his father or his mother in 1849, 1850, or 1851, nor at any time before or since those years, nor for either of them.

1132 A. to Q. 4. They never did, nor either of them. I knew Augustus Garrett in his life time; knew him from 1823 to the the time of his death.

A. to Q. 5. Have no recollection of, and don't think I ever saw Augustus Garrett's will, or a copy thereof; never was informed of its character.

A. to Q. 6. Have no recollection of, and do not think I ever expressed any opinion as to the construction of Augustus Garrett's will in either of those years, or at any time before or since.

A. to Q. 7. No, I never did.

A. to Q. 8. I never heard Charles speak of the will of said Garrett.

A. to Q. 9. I know nothing of the matters inquired of in this interrogatory.

A. to Q. 10. I never did.

1133 A. to Q. 11. I never did.

A. to Q. 12. I never did.

A. to Q. 13. I never did.

A. to Q. 14. I never did.

A. to Q. 15. I never did.

A. to Q. 16. I know nothing about the matter inquired of in this interrogatory.

A. to Q. 17. I never did.

A. to Q. 18. I never did.

Q. 19, addressed to Gardner and Barnes alone.

A. to Q. 20. I never did.

A. to Q. 21. I know nothing more; there has never been any other person in Newburgh except myself known as Judge Brown that I know of. My recollection extends back 50 years.

JOHN W. BROWN.

1134 ANSWERS OF W. D. BARNES.

A. to Q. 1. Wm. D. Barnes; am forty years of age; was born and reside in town of Newburgh, Orange county, New York; am a farmer.

A. to Q. 2. Knew Letitia Flaglor, Frederick T. Flaglor, her husband, and Charles D. Flaglor, their son, from about the year 1838 to the time of the death of each; was on friendly but not intimate terms with each of them; transacted some business for Charles during his lifetime, and was named as one of the executors of his will, but never qualified as such, and did not serve.

Q. 3, 4, 5, 6, and 7, addressed to John W. Brown alone.

A. to Q. 8. In November, 1851, I spent five with Charles in and about Chicago. He talked to me about the will of Augustus
1135 Garrett; showed me lot of property which he said had come to him from the Garrett estate; it was inventoried by appraisers at $26,000. He showed me several building lots which he said were his. I remember but one—a large lot upon which there was a foundry.

A. to Q. 9. I never heard Charles claim any particular interest under said will or state what interest he, his mother, or his children had under the same; in showing the property in Chicago he said it was his, but did not speak of any other person having any interest or estate on the same.

A. to Q. 10. I never heard him find fault with the will, or blame any person for the way it was made or for any cause connected therewith.

A. to Q. 11. While I was in Chicago, Charles talked to me about selling his property, as he called it, I advised him not to dis-
1136 pose of any of the real estate he showed me, as its increase in value would be more than the interest on the money; he said the increase would support him, and he would not sell it. And this is all I ever heard him say about selling.

A. to Q. 12. Never heard Charles or his mother say anything about the matter enquired of in the above interrogatory.

A. to Q. 13. Never heard Charles speak of the interest his children had under said will, or whether their interest could be effected by his selling the property.

A. to Q. 16. I know nothing about the matter inquired of in this interrogatory.

A. to Q. 17. I never did.

A. to Q. 18. I never did.

Q. 19, addressed to Gardner and Barnes alone.

A. to Q. 20. I never did.

A. to Q. 21. I know nothing more; there has never been any other person in Newburgh except myself known as Judge Brown that I know of. My recollection extends back 50 years.

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1134 ANSWERS OF W. D. BARNES.

A. to Q. 1. Wm. D. Barnes; am forty years of age; was born and reside in town of Newburgh, Orange county, New York; am a farmer.

A. to Q. 2. Knew Letitia Flaglor, Frederick T. Flaglor, her husband, and Charles D. Flaglor, their son, from about the year 1838 to the time of the death of each; was on friendly but not intimate terms with each of them; transacted some business for Charles during his lifetime, and was named as one of the executors of his will, but never qualified as such, and did not serve.

Q. 3, 4, 5, 6, and 7, addressed to John W. Brown alone.

A. to Q. 8. In November, 1851, I spent five with Charles in and about Chicago. He talked to me about the will of Augustus
1135 Garrett; showed me lot of property which he said had come to him from the Garrett estate; it was inventoried by appraisers at $26,000. He showed me several building lots which he said were his. I remember but one—a large lot upon which there was a foundry.

A. to Q. 9. I never heard Charles claim any particular interest under said will or state what interest he, his mother, or his children had under the same; in showing the property in Chicago he said it was his, but did not speak of any other person having any interest or estate on the same.

A. to Q. 10. I never heard him find fault with the will, or blame any person for the way it was made or for any cause connected therewith.

A. to Q. 11. While I was in Chicago, Charles talked to me about selling his property, as he called it, I advised him not to dis-
1136 pose of any of the real estate he showed me, as its increase in value would be more than the interest on the money; he said the increase would support him, and he would not sell it. And this is all I ever heard him say about selling.

A. to Q. 12. Never heard Charles or his mother say anything about the matter enquired of in the above interrogatory.

A. to Q. 13. Never heard Charles speak of the interest his children had under said will, or whether their interest could be effected by his selling the property.

A. to Q. 14. Charles told me he owned the property which he showed me while in Chicago, but did not say whether in fee or not. Never heard him deny that the same belonged to his children in fee. Never heard him say any—— about it.

1137 A. to Q. 15. Never knew of his conveying any of the property to his father or any other person. Never talked with him about it except to advise him not to sell, because the property would pay better for him to hold it.

A. to Q. 16. I know nothing about the matter inquired of in the above interrogation.

A. to Q. 17. Never heard him express satisfaction or dissatisfaction about the settlement, or speak of it in any way.

A. to Q. 18. Never heard him speak of having attorneys in Chicago.

A. to Q. 19. Charles spoke of Moses as being a man whom he wished to befriend; of Wadhams, that he was trying to defraud Moses. The he meant to Moses never heard him say anything about his selling or conveying any property to either Moses, Wadhams or Joy.

A. to Q. 20. Never heard Charles or his mother speak of employing lawyers in Chicago.

A. to Q. 21. I know of nothing further relating to the subject of this suit, or of any of the above interrogations or answers.

WILLIAM D. BARNES.

1138 ANSWERS OF LEMUEL W. EDWARDS.

A. to Q. 1. Lemuel W. Edwards; am fifty-three years of age; reside in the city of Newburgh; am a grocer.

A. to Q. 2. I knew Letitia Flaglor, Frederick T. Flaglor, her husband and Charles D. Flaglor, their son. Knew them all for about twenty years, was very intimate with Charles. Knew his father and mother well, but was never intimate with them.

Q. 3, 4, 5, 6 and 7 adressed to John W. Brown alone.

1139 A. to Q. 8. Have heard Charles speak of the will of Augustus Garrett a number of times; could not state on what occasion, or what he said at different times; heard him say his uncle Gus. had left his mother and him well off; that they had plenty of property; that is about all I recollect.

A. to Q. 9. I frequently met Charles at places where he spent money very lavishly; he was very dissolute in his habits, and squandered his money, and spent it foolishly. I often spoke to him about it, and told him he would use it all up; he invariably would reply that the property was so fixed that he could not spend it; that he could only spend the income. I recollect meeting him once at a horse race near New York City; he had a four horse team, and two or three other carriages filled with his friends. Shortly after that I remonstrated with him about squandering his

1140 property; and he then told me that the property was so fixed that

the principal would remain for his children; that is the only occasion that I now remember of speaking to him about it, but he told me the same thing a number of times.

A. to Q. 10. I never did, that I now remember.

A. to Q. 11. I don't remember of ever hearing him say anything about having power to sell the property, or about making any sale or sales thereof.

A. to Q. 12. I never heard Charles or his mother say what were their interests as contrasted with each other. Heard Charles say that he could only spend the income of the property, and that the principal would go to his children after his death.

A. to Q. 13. I never heard Charles speak of his children's interest under the will, except that the property would go to them after his death.

A. to Q. 14. I never did.

1141 A. to Q. 15. I know nothing of Charles conveying any of the property under the will to his father or any other person. Never spoke to him about it or heard him say anything about it.

A. to Q. 16. I know nothing of the matters enquired about in this interrogatory.

A. to Q. 17. I never did, to the best of my recollection.

A. to Q. 18. I never did.

Q. 19 addressed to Gardner and Barnes alone.

A. to Q. 20. I never did.

A to Q. 21. I have no further knowledge of the matters in controversy in this action.

L. W. EDWARDS.

1142 ANSWERS OF SIMEON BRADLEY.

A. to Q. 1. Simeon Bradley; am seventy-five years of age; reside in city of Newburgh; am engaged in no business.

A. to Q. 2. I knew Letitia Flaglor, Frederick T. Flaglor her husband, and Charles D. their son; knew them for a number of years, from 1820 knew them all intimately.

Q. 3, 4, 5, 6 and 7 addressed to John W. Brown alone.

A. to Q. 8. Have heard Charles speak about the will of Augustus Garrett. In the summer of 1850, at Brockport. N. Y., he said he was going to Chicago to see about the will and employ a lawyer. Next summer saw him and his wife at Brockport; said he had been to Chicago and employed lawyers on business concerning the Garrett estate.

A. to Q. 9. Have heard Charles say his mother was to have $20,000 by the will. Can't recollect what he said he was to have under the will. He said he wanted to break the will, and would 1143 like to employ Judge Brown, but it would be less expensive to employ lawyers in Chicago. He spoke of his mother's interest in connection with breaking the will.

A. to Q. 10. Have heard him say he wanted to break the will:

never heard him mention any particular part of it, or provision, that he was dissatisfied with. He blamed some one in Chicago who did Garrett's business, don't recollect whom. He said on one occasion that he did not believe it was his uncle's will.

A. to Q. 11. Never heard Charles say anything about having power to sell the property or about making any sale or sales thereof.

A. to Q. 12. Never heard Charles or his mother say what were their interests under the will as contrasted with each other. Heard
1144 his mother say that after his death the property would go to Charles, did not say more particularly than that what were the provisions of the will in that regard.

A. to Q. 13. Never heard Charles speak of his children having any interest under said will, or make any statement how they might be affected by his selling or conveying the property.

A. to Q. 14. Heard Charles say he owned some property in Chicago, did not say whether he owned it in fee or not. Never heard him deny that the same belonged to his children in fee. He once told me he owned it, when I was in Chicago, and took me around and showed me the property.

A. to Q. 15. Never knew of his conveying any of the property under the will to his father or any other person. Never had any conversation upon that subject.

1145 A. to Q. 16. In the spring of 1851 I heard Charles say that he was going to Chicago to get a settlement of the Garrett estate, and that he had employed counsel there for that purpose. That is all I ever heard of the settlement and all the knowledge I have upon that subject.

A. to Q. 17. I heard Charles speak about being dissatisfied with such settlement sometime after 1851, he spoke to me about it at Middle Hope, Orange County. Expressed dissatisfaction, don't recollect what he said.

A. to Q. 18. He once said he had employed attorneys in Chicago about the settlement of the Garrett estate. He spoke of them as if he was dissatisfied. I can't now recollect what he said. He left the impression with me that he was not satisfied with what they had done. Don't recollect the names of the attorneys.

Q. 19 addressed to Gardner and Barnes alone.

1146 A. to Q. 20. Heard Charles say he had lawyers in Chicago about the settlement of the estate. Never heard him speak of having a suit with the executors; he complained to me at one time of having to pay large counsel fees. Can't recollect more particularly what he said.

A. to Q. 21. I know of no other cause or thing not already inquired of pertaining to the subject of this suit, or to any of the interrogateries or answers.

SIMEON BRADLEY.

ANSWER OF DAVID N. BRADLEY.

A. to Q. 1. David N. Bradley; am fifty-five years of age; reside in city of Newburgh, Orange county, N. Y.; am a merchant.

A. to Q. 2. Knew Letitia Flaglor, Frederick T. Flaglor, her husband, and Charles D., their son. Knew each of them for fifteen years and upwards intimately.

1147 Q 3, 4, 5, 6, and 7 addressed to John W. Brown alone.

A. to Q. 8. I have probably heard Charles speak about the will of Augustus Garrett, but cannot recollect now on what occasion, or what he said about it, except that he had a large property in Chicago left him by his uncle Augustus.

A. to Q. 9. Never, to the best of my recollection, heard Charles say anything as to what his interest was under said will, or what the interest of his children or mother was.

A. to Q. 10. Never heard Charles find fault with the said will, or any of the provisions thereof. Never heard him blame any person for the way said will was made, or for any cause connected therewith.

1148 A. to Q. 11. Never heard Charles say anything about his power to sell the property claimed by him under said will; heard him say he owned a foundry property in Chicago, and that men were in New York City from Chicago to see him about buying or renting the same; that he was going to New York to see them about it.

A. to Q. 12. I never did.

A. to Q. 13. I never did.

A. to Q. 14. Have heard Charles say he owned property in Chicago, which came to him by the will of his uncle Augustus. Never heard him say he owned it in fee. Never heard him say anything about the interests of his children in said property.

A. to Q. 15. I never did.

A. to Q. 16. I know nothing of the matter enquired of in this interrogatory, except I once heard Charles' father say in my store of one of Charles' children who was with him, "that she
1149 would be rich one of these days."

A. to Q. 17. I never did.

A. to Q. 18. Have heard Charles say he had attorneys in Chicago, but don't recollect whether he said upon what business he had employed them, or who they were, or what were their names.

Q. 19 addressed to Gardner and Barnes alone.

A. to Q. 20. I never did.

A. to Q. 21. I know of no other matter pertaining to her subject of this suit, or of the above interrogatories or answers not above stated by me.

DAVID N. BRADLEY.

ANSWERS OF BENJ. W. BRADLEY.

1150 A. to Q. 1. Benjamin W. Bradley, am forty-five years of age reside in the city of Newburgh, am a grain dealer.

A. to Q. 2. Knew Letitia Flaglor, Frederick T. Flaglor, her husband, and Charles D., their son. Knew them for eighteen years or more intimately, lived opposite to them as neighbors for a number of years.

Q. 3, 4, 5, 6 and 7 addressed to John W. Brown alone.

A. to Q. 8. Heard Charles speak of the will of Augustus Garrett a number of times, can now recollect but one occasion; about the time of his uncle's death, told me his uncle was dead and had left him a large property in Chicago, that he would have got more if it had not been for the Crow boys and Link. I think the Crow boys were cousins of Charles, their names were Thomas and James.

1151 Heard him speak of the will a great many times, but have forgotten what he said except upon this occasion.

A. to Q. 9. Never heard Charles say particularly what was his interest in the property. In 1856 or 1857 he was very sick at Middle Hope, and sent for me to come and see him; in conversation he was most gone, but that there would be property enough left for his children after he was dead. Never heard him say what interest his mother had in the Chicago property. Heard him say that the Middle Hope property was given to her during her life.

A. to Q. 10. Heard Charles find fault with the will a number of times, said his uncle had promised him most of the Chicago property, and that he was influenced by his aunt Eliza Garrett and the Crow boys and Link to leave it as he did; he blamed them for

1152 the way in which the will was made. Said it was the will of his aunt and the Crow boys and not the will of his uncle.

A. to Q. 11. Heard Charles say he owned the property, had power to sell it, and do as he pleased with it. Did not say how he got the power, said he had sold some of it. Can't now remember on what occasions he made such statement, or what induced him to make them.

A. to Q. 12. Never heard Charles or his mother say what were their interest under the will as contrasted with each other. Heard his mother say the property would go to Charles' children after his death. That is all I ever heard her say with regard to the property under the will.

A. to Q. 13. Never heard Charles say anything about his children's interest in the property or under the will, nor how they would be affected by his selling it.

1153 A. to Q. 14. Never heard Charles claim to own the property in fee, said his uncle left it to him and he owned. Never heard him deny that the same belonged to his children in fee.

A. to Q. 15. Never heard or knew of Charles conveying any of the property under the will to his father or any other person.

A. to Q. 16. I know nothing of Charles obtaining a settlement or partition of the Garrett estate, and never heard him or his father or mother say anything about such settlement or partition.

A. to Q. 17. Never heard Charles say anything about a settlement or partition one way or the other.

A. to Q. 18. Have heard Charles speak about having attorneys in Chicago to see to his interest in the property, talked of contesting some claim, don't know what, said the attorneys kept some of the money away from him, don't remember name of attorneys.

1154 Q. 19 addressed to Gardner and Barnes alone.

A. to Q. 20. Never heard Charles or his mother speak of employing lawyers in Chicago to get a partition made or about having suit with executors or about paying counsel fees.

A. to Q. 21. The answers to the above interrogatories contain all the knowledge I have of the matter of this suit.

BENJ. W. BRADLEY.

ANSWERS OF CHARLOTTE FLAGLOR.

A. to Q. 1. Charlotte Flaglor; reside in city of Newburgh; am sixty years of age; am widow of Frederick T. Flaglor, deceased; was his second wife; have no occupation.

1155 A. to Q. 2. I know Letitia Flaglor, Frederick T. Flaglor, her husband, and Charles D., their son; knew them all their lives; was intimate with all of them; married Frederick T. in 1858.

Q. 3, 4, 5, 6, and 7, addressed to John W. Brown alone.

A. to Q. 8. Have frequently heard Charles speak of Augustus Garrett's will; can't state any occasion on which I heard him speak of it; recollect hearing him say that his uncle left his mother a handsome income, but left him property in Chicago; said nothing about his children that I remember.

A. to Q. 9. Never heard Charles say anything about his interest in the property, except his uncle left him property in Chicago; that he had left his mother a handsome income; never heard him claim any interest for his children.

1156 A. to Q. 10. Have heard Charles find fault with the will because, as he said, his mother had more than he thought she ought to have. Don't recollect any particular occasion when I heard him say so; have heard him a number of times. Never heard him blame any one.

A. to Q. 11. Have heard Charles say he had power to sell the property in Chicago left by his uncle. Said once he had sold some of it for $11,000; he had just come from Chicago, and told me what he had been doing.

A. to Q. 12. Never heard Charles or his mother say what were their interests under the will as contrasted with each other, or where the property would go after Charles' death, or what were the provisisons of the will in that regard.

A. to Q. 13. Never heard Charles speak of his children having any interest under the will, nor say whether they could or could not be affected by his selling the property.

124 A. to Q. 14. Never heard Charles claim to own the property in fee. Said he owned it, but did not say he owned it in fee. Never heard him deny that the same belonged to his children in fee.

A. to Q. 15. I know nothing of Charles conveying any of the property to his father or to any other person, except I heard him say once he had sold some of it for $11,000.

A. to Q. 16. I know nothing of Charles obtaining a settlement or partition of the Garrett estate, and never heard him or his father or mother say anything about such settlement or partition.

A. to Q. 17. Never heard Charles say anything about a settlement or partition.

A. to Q. 18. Have heard Charles say he had an attorney in Chicago about settling the estate; that there was no one to be compared to them in the way of doing business; don't think I ever heard them named.

Q. 19 addressed to Gardner and Barnes alone.

A. to Q. 20. Never heard Charles or his mother speak of employing lawyers in Chicago to get a partition made, or about having a suit with the executors, or about paying counsel fees.

A. to Q. 21. I know nothing more about the matter of this suit except what is stated in the answers to the above interrogatories.

CHARLOTTE FLAGLOR.

ANSWERS OF ODELL GARDNER.

A. to Q. 1. Odell Gardner; am thirty-nine years of age; reside at Haverstraw, Rockland County, New York; am a brickmaker.

A. to Q. 2. Knew Letitia Flaglor, Frederick T. Flaglor, her husband, and Charles D., their son; was born and brought up near their house, and knew them all intimately from my earliest recollection till the time of the death of each.

Q. 3, 4, 5, 6, and 7 addressed to John W. Brown alone.

A. to Q. 8. I have heard Charles speak about the will of Augustus Garrett a great many times; in 1851, in Newburgh, he said his uncle Augustus had left him a large property in Chicago, that he had just come from Chicago and was going back in a short time; from 1853 to 1855 I spent a great deal of time with Charles, and he was in the habit of talking about the will and the property left by it very often; I also received a number of letters from him in which he spoke of it, but am unable now to find any of them.

A. to Q. 9. Have often heard Charles speak of his interest in the property under the will; never heard him say anything directly about what interest his mother had in the property, though from his conversation I derived the impression that the property his

124½ mother had under the will would go to him after her death to his children. Heard him say repeatedly that the property under the will would go to his children after his death; *that he only had a life estate in it.* In 1851 he told me on one occasion that some people in Chicago who thought they were smart had purchased some of the property, but that he only had a life estate in it, and he guessed he was a little smarter than they were.

A. to Q. 10. Charles was dissatisfied with the will because the property was not given to him absolutely; have heard him say so. He sometimes blamed his father because he thought he had influenced his uncle to leave him the property as he did. He also blamed a man named John Linck, as near as I can recollect, and one named Tom; found fault because he only had the use of the property.

A. to Q. 11. Never heard Charles say anything about having power to sell the property claimed by him under the will; at one time he said, "the court had given him power to sell some of the property, but it was no good, as he only had a life estate in it, and the attorneys on both sides and all the parties knew it, but that he supposed they would outlive his children and get round it some way"—these are his words, as nearly as I can remember.

A. to Q. 12. Never heard Charles or his mother say what were their interests as contrasted with each other. Never heard his mother say anything about the property. Have heard Charles say the property would go to his children after his death.

A. to Q. 13. Have heard Charles say the property would go to his children after his death. Never heard him say how their interests would be affected by his selling the property, except as he spoke of the court giving him power to sell, as I related in my answer to 11th interrogatory.

A. to Q. 14. Never heard Charles claim to own said property in fee; on the contrary, he always said he only had an interest in it during his life; never heard him deny that the same belonged to his children in fee under the will.

A. to Q. 15. Amanda Pridy, a sister of Charles' wife, who lived with the Flaglors, once told me that Charles had conveyed some of the property to his father. I was engaged to her, and we used to talk about the matter somewhat. Never heard any of the Flaglors say so. Never heard him (Charles) speak of conveying any of the property to any one except once, as I related in answer to interrogatory 9th. I asked him if he would not get himself into a muss by selling. He said, no; that those who bought would get into a bigger muss. That is his language as near as I remember.

A. to Q. 16. I know nothing about Charles obtaining any settlement or partition of the Garrett estate; never heard him, or his father or mother, say anything about it.

125 A. to Q. 17. Never heard Charles say anything about a settlement or partition.

A. to Q. 18. Charles told me that he had an attorney in Chicago about the business of the estate; said his name was Arnold. Never heard him mention any other. Did not say it was business of making partition.

A. to Q. 19. I know nothing of any sale or conveyance to Wadhams and Moses, or Joy; never heard Charles speak of it.

A. to Q. 20. Heard Charles say he had employed lawyers in Chicago; he borrowed money of me to pay them; said it took all he could raise to keep the lawyers going; never heard anything about suit with executors.

A. to Q. 21. The answers to the above interrogatories contain all I know about the matters of this suit.

ODELL GARDNER.

126 I, Charles F. Brown, of the county of Orange, State of New York, a commissioner duly appointed to take the depositions of the said Daniel T. Weed, John W. Brown, William Barnes, Lemuel W. Edwards, Simeon Bradley, David N. Bradley, Benjamin W. Bradley, Charlotte Flaglor, and Odell Gardner, witnesses whose names are respectively subscribed to the foregoing depositions, do hereby certify that previous to the commencement of the examination of said Daniel T. Weed, John W. Brown, William Barnes, Lemuel W. Edwards, Simeon Bradley, David N. Bradley, Benjamin W. Bradley, Charlotte Flaglor, and Odell Gardner, respectively, as witnesses in the suit between the said Lucy C. Flaglor, executrix and devisee of Elizabeth Flaglor, deceased, plaintiff, and the said Seth Wadhams, Hiram P. Moses, Martin Ryerson, Christian S. Engle, Augusta M. Engle, Calvin Day, C. S. Warner, T. M. Avery, James Crow, and Thomas G. Crow, defendants, they were each of them duly severally sworn by me, as such commissioner, to testify the truth in relation to the matter in controversy between the said Lucy T. Flaglor, executrix and devisee of Elizabeth Flaglor, deceased, and said Seth Wadhams, Hiram P. Moses, Martin Ryerson, Christian S. Engle, Calvin Day, C. S. Warner, T. M. Avery, James Crow, and Thomas G. Crow, so far as they should severally be interrogated concerning the same. That the said depositions were all taken at the office of Cassiday and Brown, in the city of Newburgh, Orange
127 County, State of New York, on the days following, to wit:

Daniel T. Weed, on October fifteenth.
John W. Brown, on October thirteenth.
William Barnes, on September twenty-third.
Lemuel W. Edwards, on October thirteenth.
Simeon Bradley, on October sixth.
David N. Bradley, on October tenth.
Benjamin W. Bradley, on October eleventh.
Charlotte T. Flaglor, on October eleventh.
Odell Gardner, on October tenth, A. D. 1870.

And that after the depositions of each witness as aforesaid, the interrogatories and answers thereto as written down were read over to the said witnesses, and that thereupon the same was signed and sworn to by them, the said witnesses respectively, before me, as such commissioner, at the place and on the day and year last aforesaid.

CHARLES F. BROWN,
Commissioner.

Dated October 22nd, 1870.

128 And afterwards, to wit, on the fourteenth day of August, in the year last aforesaid, to wit, 1872, the same being one of the days of the August term of said court, the following, among other proceedings, were had in said court and entered of record, to wit:

LUCY C. FLAGLOR, EX'X, &C.,
54 *a* 17,274. *vs.* } Bill.
GODFREY N. JESSEL ET AL.

This day again comes the said complainant, by her solicitor aforesaid, and it appearing to the court that due personal service of process of summons issued in this cause has been had on James Crow and Thomas G. Crow, two of the said defendants, for more than ten days before the first day of this term. And it further appearing to the court, upon affidavit of the non-residence of Catherine Reid, one of the said defendants, having been filed herein, due notice was given her of the pendency of these proceedings by publication of the same in the Chicago Evening Journal, in pursuance of the statute in such case made and provided, and that due proof of the publication of such notice has been filed herein. On motion of said complainant's solicitor, it is ordered by the court that the said defendants above named be, and they are hereby, required to plead, answer, or demur instanter to the bill of complaint filed in this cause, and no plea, answer, or demurrer,
129 or other matter of defence being interposed thereto by the said defendants above named, and they being now here three times solemnly called in open court, come not, nor does any person for them, but herein they make default, which is, on motion, ordered to be taken, and the same is hereby entered herein of record, and it is ordered by the court that the said bill of complaint and the matters and things therein stated and charged be, and the same are, hereby taken *pro confesso* by and against the said defendants above named for want of their appearance and answer thereto.

LUCY C. FLAGLOR, EXECUTRIX, &C., OF ELIZABETH FLAGLOR,
45 *a* 17,274. VS.
GODFREY JESSEL, CATHERINE REID, JOSEPH H. MATHER, and THEODORE H. CURTIS, JAMES CROW, and THOMAS G. CROW, the surviving executors of AUGUSTUS GARRETT. } Decree.

It appearing to the court that all the original pleadings, files, records, and evidence in this cause were destroyed by fire, namely, the original bill claiming title to lot 25, in block 9, in the Fort Dearborn addition to Chicago, filed on the 25th day of February, A. D. 1867, by Elizabeth Flaglor against said above-named defendants thereto, the suggestion of said Elizabeth Flaglor's death, and the bill of review filed by said Lucy C. Flaglor on the 26th day of November, A. D. 1867, the order of court overruling
130 said defendants' demurrers thereto, and reviving said cause and ordering that the same proceed in the name of said Lucy C. Flaglor, as being the sole heir-at-law, devisee, and executrix of said Elizabeth; also the several answers of Godfrey A. Jessel, one of said defendants, filed on the nineteenth day of December, A. D. 1867, to said original bill and to said bill of revivor and supplement, the amended bill filed in October, A. D. 1868, the answer of said Godfrey A. Jessel thereto, filed in March, A. D. 1869, and also the replication of said complainant to said answer, filed in August, A. D. 1869. Also the evidence filed herein, being as follows, to wit, the depositions of John W. Brown, Daniel T. Weed, Lemuel W. Edwards, Simeon Bradley, Benjamin W. Bradley, David N. Bradley, William Barnes, Charlotte T. Flaglor, and Odell Gardner, on the part of said complainant. And the court having made its order in this cause for the restoration of said pleadings, files, records, and evidence, and the said parties to this suit having in compliance with said order voluntarily brought true copies of all of said pleadings, files, evidences, and exhibits here into court, and the said parties, namely, the complainant by Arthur W. Windett, her solicitor, and the said defendants by Hugh A. White, their solicitor, now moving the court to order the said copies to be filed, substituted, and to stand in the place and stead of said original pleadings, files, evidence, and exhibits. It is, therefore, or-
131 dered by the court that said copies of the pleadings, files, evidence, and exhibits, now filed, be deemed and taken to constitute the record herein, and as having and being of the same force, use, and effect as said destroyed originals, to all intents and purposes, and the same is thereupon done accordingly.

And thereupon on further motion of said parties now being present in open court by their said respective solicitors as aforesaid, the said cause now this day coming on to be heard, and by the court upon the record as aforesaid being heard, and upon the further proofs and evidence adduced and offered by the said respective parties, being as follows, to wit: a duly certified copy of the record of the proceedings and decree in partition of the Cook County Circuit Court at the May term, A. D. 1851, wherein Eliza Garrett, James Crow, and Thomas G. Crow, the executors of Augustus Garrett, deceased, were complainants, and Charles D. Flaglor et al. were defendants, was offered in proof by complainant, with a certificate of the clerk of said court, showing that the May term, 1851,

ended on the 28th day of May, 1851, being the same record of said partition proceedings and decree which is contained in the transcript from the supreme court in the case of Elizabeth Flaglor by her next friend v. James Crow et al., which transcript was also offered in evidence at said hearing by said complainant, as well as the original files of the said circuit court, which were also produced, except the proceedings in the bill of review. Also, a duly
132 certified transcript of the said record of proceedings and judgments of the Supreme Court of Illinois at the April term, A. D. 1866, in a certain cause wherein Elizabeth Flaglor, by John Link, her next friend, was plaintiff in error, and James Crow et al., Edward Jessel et al., and Seth Wadhams et al. were defendants in error, of he same tenor and effect as that now again filed herein, which two certified copies of records last above mentioned are the same which are now on file in this court in the case of said complainant vs. Seth Wadhams et al., lately depending herein, and which were determined by decree therein entered on the 20th day of June, A. D. 1872. Also, the depositions in writing of the following witnesses, with the exhibits, viz: The deposition of John Link, Isaac N. Arnold, Thomas G. Crow, E. B. McCagg, Samuel McCotter, John W. Brown, Daniel T. Weed, Lemuel W. Edwards, Simeon Bradley, Benjamin W. Bradley, David N. Bradley, William Barnes, Charlotte Flaglor, and Odell Gardner. Also, a duly certified copy of the record of a petition by Charles D. Flaglor, filed in July, 1851, in the Surrogate Court of Orange County New York, to be appointed guardian of Elizabeth Flaglor and Lucy Louisa Flaglor, his children, and of the proceedings and orders of said court thereupon, being the same now filed herein.

Also, a duly certified transcript of the record of petition by Eliza Garrett, James Crow, and Thomas G. Crow to the Cook
133 County Court in September, 1851, for the sale of real estate, and of the proceedings and orders of said court thereon, being the same filed herein.

Also the record of the probate of the will of Elizabeth Flaglor, and letters testamentary to said Lucy C. Flaglor. Also the evidence of the following witnesses, called by the complainant at the hearing, who testified orally, viz: John Link and Arthur W. Windett, whose testimony, as written out, with the exhibits by them referred to, is filed in this cause; the exhibits to the oral depositions of said Link are lettered "A" to "H" inclusive, consisting of eight certain interchangeable receipts between the executors and devisees of said Garrett, made on or about the 29th day of May, 1851.

Also due proof of the following facts, that is to say: that said Eliza Garrett died in November, 1855, that Mary Banks had before that time died, that Letitia Flaglor died February 8, 1856, said Charles D. Flaglor died December 23, 1858, being the persons named in Augustus Garrett's will; that Elizabeth Flaglor was born

March 3, 1849, and died August 9, 1867. That said Lucy Louisa Flaglor was born December 10, 1850, and died May 15, 1852. Julia L. S. Flaglor was born December 1st, 1852, and died November 23, 1855. Augustus Garrett Flaglor was born September 3d, 1854, and died March 17th, 1855, and Charles D. Flaglor, the younger, was born on January 4, 1856, and died April 27, 1857, being all
the legitimate children, five in number, that were born to
134 the said Charles D. Flaglor, who is named in said Garrett's
will, and that said Elizabeth Flaglor was the sole legitimate child of said Charles who survived him; and that the said Lucy C. Flaglor, the complainant herein, was the lawful wife of said Charles D. Flaglor, and the mother of said Elizabeth Flaglor. That due proof of service of process herein was made upon all of the defendants to this suit, and that the default for want of an answer of James Crow and Thomas G. Crow, the surviving executors of Augustus Garrett, and of said Catherine Reid, was entered of a rule to plead, answer, or demur instanter, having been entered of record, and they having failed to plead, answer, or demur to said bill. Also five certain deeds by and between Charles D. Flaglor, Letitia Flaglor, and Frederick T. Flaglor, copies of which are placed on file herein, and were duly acknowledged and executed and recorded about the time of their date, being as follows, to wit: a deed, dated December the 17th, A. D. 1853, between Charles D. Flaglor and wife and Frederick and Letitia Flaglor; a deed, bearing the same date, between the said Frederick T. Flaglor and Letitia and said Charles D. Flaglor; a deed, dated August 19th, A. D. 1857, between the said Frederick and said Charles; a deed, bearing the said last date, between said Charles and said Frederick; lastly, a deed, dated the seventh day of January, A. D. 1858, between the
said Frederick T. Flaglor and said Charles D. Flaglor, and a
135 certain assignment from said Frederick T. Flaglor to said
Catherine Reid, for an alleged consideration of one dollar, of said mortgage for $20,000, on said premises, being said deed from Charles to Frederick T. Flaglor, above mentioned, dated August the nineteenth, A. D. 1857. Also the following evidence in printing, depositions, exhibits, and documents, on the part of the defendant, to wit: the depositions of James Crow, and the exhibits attached thereto; the depositions of Grant Goodrich, and the exhibits attached thereto or therein referred to.

The following deeds, made, executed, and acknowledged in due form, and all dated May 29th, 1851, and duly recorded, viz: a deed from James and Thomas G. Crow to Eliza Garrett; a deed from Charles D. Flaglor and Frederick T. Flaglor and wife to Eliza Garrett; a deed from Eliza Garrett to James and Thomas G. Crow; a deed from Eliza Garrett to Charles D. Flaglor and Letitia Flaglor, and a deed from James and Thomas G. Crow to Charles D. Flaglor and Letitia Flaglor.

Also a certain contract between the said Flaglors, Crows, and

Eliza Garrett, bearing date the 29th day of May, 1851, and duly executed, acknowledged, and recorded about the day of its date, being the same agreement or instrument marked Defendants' Exhibit C, and attached to the depositions af James Crow. It being agreed and admitted by the several parties that the several
136 deeds, powers of attorney, and contracts which are in the several pleadings herein stated to have been recorded in the recorder's office of Cook County, were duly recorded at or about the times in said pleadings stated, and thereupon, having heard the argument of counsel, as well for complainant as for said defendants, the court took said cause upon the said record of bill, answers, evidence, documents, and proofs under advisement.

LUCY C. FLAGLOR, EXECUTRIX, &C., OF ELIZABETH FLAGLOR, *vs.* GODFREY N. JESSEL, CATHERINE RIED, JOSEPH H. Mather, and Theodore H. Curtis, James Crow, and Thomas G. Crow, the surviving Executors of Augustus Garrett.	Decree.

54 *a* 12,724.

This cause having been, after full argument, as well for complainant as for defendants, taken under advisement, and the court now being fully advised thereof, and it appearing to the court from the bills, original and amended, the answers thereto, the evidence taken and heard in the cause, as well oral and by depositions of the witnesses as documentary, the exhibits offered by the said parties; That the allegations and charges in said bills contained are true, and that said Elizabeth Flaglor was the only child of said Charles D. Flaglor who survived him, and that said Charles D.
137 Flaglor having survived said Letitia Flaglor, departed this life on the 23d day of December, A. D. 1858, and that said complainant, Lucy C. Flaglor, is the sole heir-at-law, executrix, and devisee of said Elizabeth, and as such is entitled to stand in her place and stead and have the same right and relief as the said Elizabeth would, if alive.

And that under the will of said Augusta Garrett, deceased, the legal estate and title of and to the lot twenty-five (25), block nine (9), Fort Dearborn addition to Chicago, being the premises herein in controversy, was devised to and vested in the said James and Thomas G. Crow, as the surviving executors of said Augustus Garrett, the said Eliza Garrett having died in November, A. D. 1855, and was, and is now, held by them subject to the equities of and in trust for said Elizabeth as the sole surviving child of said Charles, and for said present complainant as her sole heir, executrix, and devisee under, in virtue, and in pursuance of said decree in partition of said Cook County Circuit Court, made at the May term, A. D. 1851, as stated in said bills, and that said decree in partition was entered by the procurement and authority and with the consent

of said Letitia, Frederick T., and Charles D. Flaglor, and was by them accepted, adopted, and ratified; that they, the said Letitia, Frederick, and Charles, and their grantees and privies in estate, including the said defendants herein, were thereby fully bound, concluded, and estopped, and that in and by the said deeds
138 from said James and Thomas G. Crow to said Letitia and Charles, and from said Eliza Garrett to the said Letitia and Charles, dated May 29, 1851, referred to in said amended bill and in said answer, only the undivided and personal interest of said James and Thomas and Eliza Garrett, respectively, were conveyed and released to said Letitia and Charles, and not the legal or equitable estate and title in said executors vested, and by them held in trust under said will, and that said deeds were made in the intended execution of said decree in partition of May, 1851, and subject to the limitations, declarations, and provisions of said decree in favor of the surviving child or children of said Charles D. Flaglor, and that said deeds were made and designed by said James and Thomas G. Crow and said Eliza Garrett and were accepted by said Letitia and Charles, in trust, to support and preserve the said interest of said surviving child and the limitations of estate in her favor, as declared in and fixed by said decree.

And it further appearing that said Godfrey A. Jessel, Catherine Reid, Joseph H. Mather, and Theodore H. Curtis, and each and all of the other defendants, their grantees and privies in estate, claiming under said Letitia, Frederick, and Charles, or either of them, by act or deed, subsequent to the entry of said decree, deeds, and recorded agreement of May, 1851, aforesaid, had, severally
139 and respectively, full and actual notice from the record and otherwise of the several facts and circumstances in said bills alleged, and of the right and equity of said Elizabeth under said decree, deeds, and recorded agreement of May, 1851, aforesaid, namely, that said decree in partition had been entered by the procurement and authority and with the consent of said Letitia, Frederick, and Charles D. Flaglor; that said Letitia and Charles had each but a life estate in and to said premises and no more; that the legal estate and title in fee in and to said premises was vested in and held by said executors and not said Letitia, Frederick, or Charles, and that, upon said Charles' death, the said Elizabeth, as his sole surviving child, was entitled to the said premises absolutely in fee simple, and to have the same conveyed and released to her by said Garrett's said surviving executors, and to be put into the possession of said premises, and to have and receive, use and enjoy, the same and the possession, rents, issues, and profits thereof absolutely to her own sole use and benefit, and with like full notice of the nature and defects of the title which said Letitia and Charles had in and to said premises, and that they could only convey an estate therein for the life of each and no other, greater, or different estate; that their conveyances were subject to the equity and

140 right of said surviving child of said Charles, and were, except as to the estates of said Letitia and Charles and as against said Elizabeth's right under said decree, deeds, and recorded agreement of May 29, 1851, null and void, and that said Godfrey A. Jessel, Catherine Reid, Joseph H. Mather, and Theodore H. Curtis, and their several and respective grantees and privies in estate, including the said other defendants claiming under them, or either of them, part or parcel of said premises, having and being chargeable with such notice, were not and are not purchasers of said premises or any part thereof in good faith without notice, and are not entitled to protection as such as against said complainant and the said Elizabeth Flaglor in her lifetime.

It is therefore ordered, adjudged, and decreed by the court that the said complainant do have and recover of and from the said defendants the said lot twenty-five (25), block nine (9), Fort Dearborn addition to Chicago. That said defendants James Crow and Thomas G. Crow do forthwith release and convey to said complainant said premises and all the right, title, and estate which, under said will of Augustus Garrett, they had or have in trust for said Elizabeth and for said complainant as her sole heir, executrix, and devisee, under and subject to the provision of said decree that the said Godfrey A. Jessell, Catherine Reid, Joseph H. Mather, and Theodore H. Curtis do forthwith release, convey, and sur-

141 render to her the said lot twenty-five (25), block nine (9), Fort Dearborn addition to Chicago, being the same premises which are described in said deed from said Charles D. Flaglor to said Letitia and Frederick T. Flaglor, dated December 17th, A. D. 1853, in said deed from Frederick T. Flaglor to Charles D. Flaglor, dated August 19, A. D. 1857, and in said deed from Charles D. Flaglor to said Frederick T. Flaglor, dated August 19th, A. D. 1857, and in said deed of a lease from said Charles D. Flaglor to Albert Losee, dated A. D. 1857, and in the assignment thereof from said Losee to said defendant Jessel, and being the same premises in the bill herein described, and which are now claimed by said defendant Jessel, as lessee, privy, and grantee, under and from said Frederick and Charles D. Flaglor and by said Catherine Reid, one of the defendants, as pretended assignee from said Frederick of his interest as mortagee under said deed from said Charles, dated August 19, A. D. 1857.

And it is further ordered, adjudged, and decreed that said defendant Catherine Reid, having before and at the time of the pretended assignment to her by said Frederick T. Flaglor of said mortgage, and of the pretended indebtedness therein mentioned to him, upon said premises herein in question from said Charles D. Flaglor, dated August 19, A. D. 1857, which mortgage was recorded on the 21st day of August, 1857, in book of mortgages No. 32, at page 257 thereof, in the office of the recorder of deeds in and for Cook County, and which assignment thereof was recorded in said office in

142 book , at page thereof, had notice of the said Elizabeth Flaglor's right and equity, and that said Charles D. Flaglor had only a life estate in said premises, and that both he and said Frederick T. Flaglor were bound, concluded, and estopped by said decree of the May term, 1851; that said Frederick, at the time he took from said Charles said mortgage, well knew the said facts relating to said Charles' title, and gave no value therefor, and that neither said Charles nor Frederick had the legal title and estate in said premises, but that the same was held by said Crows in trust for said Elizabeth Flaglor, and that both said Charles and Frederick, as well as said Letitia, had in and by said deeds and agreement for partition made on the 29th day of May, A. D. 1851, referred to in said bill and answers, and given in evidence, had become trustees of and for said Elizabeth, as the sole surviving child of said Charles, under the provisions and limitations in her favor contained in said decree of partition of May, A. D. 1851, aforesaid, namely: to hold said premises and whatever title they or either of them might have acquired in said premises, after satisfying the successive life estates of said Letitia and Charles D., in trust for and for the sole and exclusive benefit of the said surviving child of said Charles, she, the said Catherine Reid, is not a purchaser or incumbrancer of said premises, or of any part thereof, in good faith for value, without notice of said Elizabeth Flaglor's right, or without notice of
143 the defects and real nature of said Frederick T. Flaglor's title and of those under whom he claimed title, and as not entitled to protection as a purchaser or incumbrancer in good faith without notice, and *and* that as against the said complainant the said pretended mortgage, and the lien and incumbrance thereby attempted to be created upon the said premises, is utterly null and void, and that the said complainant is hereby adjudged and declared entitled to hold the said premises wholly discharged, free, and clear therefrom forever.

And that said Catherine Reid do execute, acknowledge, and deliver to said complainant, by filing with the clerk of this court in this cause for her use, a release of said premises, being the same herein in question, from the lien and charge of said pretended deed of mortgage hereinbefore referred to, the same to be without prejudice to her right as against the estate of said Charles D. Flaglor and Frederick T. Flaglor, to claim payment of said mortgage from them. And the said defendants Godfrey A. Jessell, Theodore H. Curtis, and Joseph H. Mather, in consideration of said complainant consenting to waive any and all claim against them, or any of them, for back rents, do hereby, in person and by their attorney, H. A. White, consent to the entry of said decree, and do waive, relinquish, and give up any and all right of appeal, rehearing, or new trial which otherwise they might have in the premises, *they* and agree to surrender and give up possession of said premises
144 to said complainant forthwith, free and clear of any and all incumbrances whatever created or suffered by them.

And it is ordered that in case any of said parties, who are hereby required to execute and deliver to said complainant any deed or deeds, shall neglect or fail to execute, acknowledge, or deliver any such deed or deeds, as above required, for the space of ten days from the entry of this decree, then in that case and event Ira Scott, esquire, master in chancery, of this court, shall execute and deliver the same as special commissioner on the part of such said defendant or defendants, who shall thereby be bound fully and to all intents and purposes whatsoever.

And it is further ordered, adjudged, and decreed that the said complainant do recover her costs in this cause, to be taxed by the clerk, and have execution therefor.

And afterwards, to wit, on the 14th day of August, in the year last aforesaid, there was filed in the said clerk's office the answers of Godfrey A. Jessell to the original and amended bills of complaint, Exhibit C to G. Goodrich's deposition, certain depositions, record of the county court, &c., certain deeds, and the petition of C. D. Flaglor in surrogate court, which are in words and figures as follows, to wit:

145 Superior Court of Chicago.—To the March term, A. D. 1869.

LUCY C. FLAGLOR, Executrix, &c., *vs.* GODFREY A. JESSEL *et al.* } In Chancery.

The answer of Godfrey A. Jessel, one of the defendants to the amended bill of complaint of Lucy C. Flaglor, complainant.

1. This defendant, now and at all times hereafter saving and reserving to himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's amended bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant, answering, saith:

2. That he admits, as alleged in said complainant's said
146 amended bill, that said Frederick T. and Letitia Flaglor gave a power of attorney to said Charles D. Flaglor for the purposes and objects specified in the said complainant's said amended bill. And this defendant admits that said Charles D. Flaglor came to Chicago in November, A. D. 1850, as alleged in said complainant's said amended bill, to investigate into the condition of the said estate, to confer with the executors of said Augustus Garrett about his and his mother's interests in said estate; but this defendant denies that said Charles D. consulted about the interests of his children who should survive him, but, on the contrary, said Charles D. always claimed that his children had no interest under the said will, but that under the seventh clause of the

said will his interest was in fee simple to his share of the property, the same as the Crows to their share.

3. And this defendant, further answering, saith he denies that the said Charles D. Flaglor consulted said Arnold and Lay
147 at the time alleged in said complainant's said amended bill, or at any other time, as to his interest or estate under the said will, or upon any subject or matter whatsoever connected with the will of said Augustus Garrett; and this defendant denies that said Charles D. employed said Arnold and Lay, at that time or at any other time, as his counsel to advise with him about his interest in said estate, or to appear for him or to represent him in any proceedings that might be instituted for partition or for any purpose whatsoever, as falsely alleged in said complainant's said amended bill.

4. And this defendant, further answering, saith he admits it to be true, as alleged in said amended bill, that said Charles D. Flaglor became satisfied from the condition of said estate, and from other circumstances, that a division and final partition of said estate should be made before the time provided in the said will, but this defendant denies that said Charles D. ever made or
148 assented to the agreement set forth in the original bill for partition, but, on the contrary thereof, said Charles D. agreed with James Crow, the acting executor of said estate, that a partition should be made, giving to his mother a life estate in his share, $\frac{1}{6}$ of said estate, remainder in fee to himself, without reference to his children, in accordance with the seventh clause of said will.

5. And this defendant, further answering, saith he admits it to be true, as stated in said amended bill, that in A. D. 1850 and 1851 divers conferences were had between the parties in interest touching a division of the said estate, and that separate lists were made by the parties and duly allotted, and what each of the parties in interest should take as his or her share was fixed and agreed upon, but this defendant denies that in the portion set off and allotted to the Flaglors the said Charles D. Flaglor made any agreement about his children, but, on the contrary, said Charles D. always, during all their conferences, and at all other
149 times, refused to recognize that his children had any rights therein.

6. And this defendant, further answering, saith that he denies that said Charles D. Flaglor, as falsely alleged in said amended bill, consulted and advised with his counsel respecting his interest under said will at that time or any other, and this defendant further says that said Charles D. Flaglor employed no counsel at that time or any other touching the matter of his interest under said will, and this defendant denies that his counsel or any attorney advised said Charles D. that his interest under said will was

but a life estate, and that his children who should survive him would be entitled to a remainder in fee, but, on the contrary, this defendant avers that said Charles D. always insisted on his construction of the seventh clause of said will that he was entitled to remainder in fee after his mother, Letitia Flaglor's, life estate, and that he was so advised by Judge Brown, an eminent counsellor of Newberg, N. Y., where he then resided.

7. And this defendant, further answering, saith he denies,
150 as so often falsely alleged in said amended bill, that under the said will of said Augustus Garrett the said Charles D. Flaglor only took a life estate, and that he was so advised by said Arnold and Lay, his counsel, as falsely stated in said amended bill, and that he employed them in behalf of himself, his father and mother; but, on the contrary thereof, this defendant avers that by the express terms of said will an estate in fee was vested in the said Charles D. upon the death of his mother, him surviving, as has been expressly decided by the Supreme Court of Illinois, so that it is no longer a matter of construction or opinion among lawyers, and this defendant again avers that said Charles D. Flaglor never retained or employed said Arnold and Lay or any attorney to appear for him or his mother or father in said original suit for partition in the Cook County Circuit Court, in the year A. D. 1851, or authorized said Arnold and Lay to file any answer
151 for them in said suit; but, on the contrary thereof, said answer, purporting to be his answer in said suit, was filed by the said Arnold and Lay in his, the said Charles D. Flaglor's, absence from this State, and while he was a non-resident, and without his knowledge, consent, or authority. And this defendant further avers that after the entry of said pretended and fraudulent decree of partition in the year A. D. 1851, and the said Charles D. Flaglor was advised thereof, he utterly repudiated the same and refused to be bound thereby, and that thereupon the said parties in interest, viz., Eliza Garrett, James Crow, and Thomas G. Crow, and Charles D. Flaglor and Letitia Flaglor, met together, and on the 29th day of May, A. D. 1851, proceeded to make partition of the said estate, according to the arrangement previously made, by mutual deeds to each other of their respective portions of the said estate, as the said Charles D. had always contended was the proper mode of making partition, without reference
152 to the said pretended decree, and upon said deeds being delivered to the respective parties they severally went into possession of their respective portions of the said estate.

8. And this defendant, further answering, saith he admits it to be true, as alleged in said amended bill, that the said Charles D. Flaglor, in his conferences with the executors of the said estate, acted, as well for himself as for his mother and father, as their attorney-in-fact.

9. And this defendant, further answering, saith he denies, as alleged in said amended bill, that said Charles D. Flaglor made the agreement with said Eliza Garrett, James Crow, and Thomas G. Crow for partition, as set forth in the bill for partition and in the record of proceedings and decree of said circuit court, but, on the contrary thereof, this defendant avers that the said Charles D. Flaglor utterly refused to make such agreement with said executors recognizing the right of his children to the fee after a life estate in himself, although hard pressed so to do by said
153 executors; and, after a great deal of wrangling and quarrelling between the executors and the said Charles D. Flaglor, it was finally agreed by James Crow, the acting executor, and the said Charles D. Flaglor that the said property should be partitioned off according to the terms of the said will, and a memorandum in writing to that effect was made by the said James Crow and assented to by the said Charles D. Flaglor, and the said memorandum was to be a basis for obtaining a decree of partition, and the said Charles D. Flaglor left for his home in Newberg, N. Y., with the understanding and agreement that the said James Crow should file a bill and obtain a decree of partition in accordance with the said agreement so made between them. And this defendant avers that the said executors or their solicitors, in the absence of the said Charles D. Flaglor from this State, and without his knowledge or consent, and contrary to the express agreement of the parties, incorporated into their bill of partition the agree-
154 ment set out therein, whether by mistake or not this defendant does not know, but which said executors well knew said Charles D. Flaglor always refused to assent to, and the said executors, or one of them, employed the said Arnold & Lay, without the authority, knowledge, or consent of the said Charles D. Flaglor, to file his answer thereto, thereby confessing that he, the said Charles D., had made such agreement, when in fact he never made such agreement, in gross fraud of the said Charles D. Flaglor, whether intentional or not on the part of the said executors.

10. And this defendant, further answering, saith that he denies, as falsely alleged in said amended bill, that the said Charles D. Flaglor ever agreed with the said Eliza Garrett, James Crow, and Thomas G. Crow, that an estate for life in the lands to be set off fo the Flaglor stirps should be set off to him, the said Charles D., tor life, and remainder in children who should survive him.

11. And this defendant, further answering, saith that he
155 denies that the bill for partition and the proceedings thereunder and the decree that was entered in the Cook County Circuit Court in the year A. D. 1851 were ever agreed or assented to or sanctioned in any way by the said Charles D. Flaglor; but this *defendant avers that the said Charles D. did agree with the executors of said estate*, that a *bill for partition of said estate* [*?*] *might be filed and decree obtained*, on the basis of the agree-

ment made by the said Charles D. with said James Crow, acting executor of said estate, in accordance with the provisions of the will of said Augustus Garrett, viz: A contingent estate in fee to be vested in the said Charles D. Flaglor, subject only to the life estate of his mother, Letitia Flaglor; and for *such a bill and the proceedings* thereunder, *the said Flaglors agreed to pay their proportion of the expense*, and for none other; and this defendant denies that the said Goodrich filed said bill, conducted the proceedings thereunder, and obtained the decree in pursuance of any agreement ever made by the said Charles D. Flaglor,
156 for this defendant avers that no other agreement touching the premises was ever made by the said Charles D. than the one above specified, which was not followed or adhered to by the said executors.

11½. And this defendant, further answering, saith that he denies that the said Charles D. Flaglor ever ratified, sanctioned, or adopted said decree of partition, or paid the said Goodrich any part of the expenses of obtaining said decree, although this defendant believes that the said Frederick T. Flaglor paid some portion of said expenses, not by way of ratifying said decree, but simply to buy his peace and prevent wrangling.

12. And this defendant, further answering, saith that he denies that the said Charles D. Flaglor, Letitia Flaglor, and Frederick T. Flaglor, or either of them, ever employed or made the said Goodrich their solicitor and attorney for the purpose of drafting and filing said bill or conducting said suit for partition, but this defendant avers that they were all entirely ignorant that such
157 a bill was filed until after the decree was entered.

13. And this defendant insists that a decree, so obtained, without the knowledge, consent, or authority of the said Charles D. Flaglor, and in fraud of his rights under said will, can be no estoppel on said Charles D. Flaglor or this defendants *bona fide* purchasers in fee of said premises.

14. And this defendant, further answering, saith that he denies that the said James Crow was agent for the said Charles D. Flaglor in instituting and prosecuting said suit for partition, because said Charles D. never authorized said Crow to institute such a suit, and the only authority given by said Charles D. Flaglor to said Crow was to institute and prosecute a suit for partition based upon the agreement made between them, viz., to obtain a decree of partition giving a life estate to Letitia Flaglor and remainder in fee, contingent upon his surviving said Letitia, in said Charles D., which he, the said Crow, never did.

15. And this defendant, further answering, saith that he
158 denies that said suit for partition was instituted and prosecuted and final decree obtained by the authority, procurement, direction, and consent of the said Charles D. Flaglor,

Letitia Flaglor, and Frederick T. Flaglor, but, on the contrary thereof, the same was obtained without their knowledge or consent, and in manifest fraud of the rights of said Charles D. under said will.

16. And this defendant, further answering, saith that he denies, as alleged in said amended bill, that it would have taken ten (10) years, or till 1862, to have paid off the debts of the estate of Augustus Garrett from the rents and income thereof had no partition been made; but whether it would or not this defendant insists is perfectly immaterial, as all the parties in interest under said will, without exception, were anxious, and it was for the interest of each and every one of them, that a partition of said estate should be made, the only question being how it could legally be done. The executors thought it could only be effected by decree of court, while said Charles D. Flaglor contended that par-
159 tition could be made by mutual deeds to each other, and by way of compromise between the said executors and the said Charles D. it was finally agreed that the said James Crow, acting executor, should file a bill for partition, and obtain a decree setting off to the several parties their respective interests in said estate under said will, giving to Letitia Flaglor a life estate in $\frac{1}{6}$ of said estate, and vesting the remainder in fee, contingent upon said Charles D. surviving said Letitia, in said Charles D., according to the provisions of said will, which bill of partition and decree, as agreed upon as above, was never filed and decree obtained by the said James Crow or the said executors, but in fraud of the said Charles D. the said executors or their counsel filed a bill of partition, setting out a pretended agreement between the said parties, which the said Charles D. had time and again and always refused to assent to, and substituting such false and fraudulent agreement in place of the real agreement made between the parties in
160 said bill of partition, proceeded thereunder, and obtained said false and fraudulent decree relied upon by the said complainant in this suit in the absence of the said Charles D. and without his knowledge or consent.

17. And this defendant, further answering, saith that he denies that the said Charles D. Flaglor ever consented to, or ratified, confirmed, or in any manner recognized, said false and fraudulent decree; but, on the contrary thereof, this defendant avers that he always repudiated the same and utterly refused to be bound thereby, and anything alleged in said amended bill to the contrary thereof is untrue and false.

18. And this defendant, further answering, saith that he denies again that said Charles D. Flaglor ever retained or employed or caused to be retained or employed the said Arnold & Lay, or any other attorney, to file his answer, or his mother's or father's answer, or their joint answer to the said pretended bill of partition,

for said Charles D. never knew such a bill was to be filed,
161 and the same was filed without his knowledge or consent.

19. And this defendant, further answering, saith that he denies that the $\frac{1}{6}$ part set off to the said Flaglors was allotted and set off by any decree of court; but avers the fact to be that the parties in interest, under the will of said Augustus Garrett, in 1850, and before the said pretended decree, *mutually agreed* among themselves how the property should be divided, the particular pieces of property each party should take, and whether the portion so agreed upon for the Flaglors was more productive than the other portions set off to the other parties this defendant does not know; but avers that if it was it was merely accidental, and that no such reason as alleged in said bill, viz., that said Charles D. Flaglor wanted the share most productive, as he and his mother had only a life estate therein, and his children remainder in fee, and the other reasons asserted in said amended bill, were ever made. On the contrary, said Charles D. always insisted that his title was in fee after his mother's life estate,
162 and as good as the Crows' title to their share, and this defendant denies that any such consideration as above influenced the said Eliza Garrett and the said Crows to consent that such portion should be set off to the said Flaglors.

20. And this defendant, further answering, saith that he denies that the said Charles D. Flaglor was ever brought into court in said suit for partition in the Cook County Circuit Court, in the year A. D. 1851, by service of summons, or constructively by publication, or by voluntary entering his appearance, and this defendant insists that said proceedings were, so far as said Charles D. was concerned, *coram non judice* and void.

21. And this defendant, further answering, saith that he denies that said Charles D. Flaglor was in Chicago while the proceedings under said bill of partition were going on, or knew of the same, or took part in choosing commissioners thereunder, as falsely alleged in said amended bill, but, on the contrary thereof, said Charles D. knew nothing about said fraudulent proceed-
163 ings until after decree was entered. And when informed of what had been done in his absence by the said James Crow, he denounced them, and swore that he would not be bound by a decree obtained in violation of his agreement with the said Crow.

22. And this defendant, further answering, saith that he again denies, as falsely alleged in said amended bill, that the said Charles D. Flaglor knew of, approved, sanctioned, or directed the said answer to be filed in said suit, or that he knew or approved of said bill, or consented that the prayer of said bill should be granted, or that a life estate should be limited to himself, and remainder in fee to his children; nor did the said Charles D. accept or receive

the said decree, or acknowledge it to be binding, but, on the contrary, he totally repudiated it and went into possession of his share of said property under mutual deeds to each other by the parties in interest of their several portions, without reference to said fraudulent and void decree.

164 23. And this defendant, further answering, saith that he denies that said deeds of partition were made between the said parties in pursuance of said pretended and fraudulent decree, as no provision was made in said decree for deeds to be given, nor any allusion thereto made, but this defendant avers that the fact was that the said executors, to pacify the said Charles D. Flaglor, who was very indignant at the course pursued by the said executors in obtaining said decree in his absence, and so contrary to the agreement and understanding between them and the said Charles, adopted the course first suggested by the said Charles, and always contended by him to be sufficient to make partition, viz: by mutual deeds to each other of their respective portions without mentioning or alluding in any way to the hateful decree which had aroused so much indignation in the said Charles, and which he had refused to be bound by.

165 24. And this defendant admits that an agreement as alleged in said amended bill was entered into between the said parties at the same time with the execution and delivery of said partition deeds, and was a part of the same transaction; but he utterly denies that such agreement was executed for the reasons or causes assigned by said complainant, or that the said agreement admits of any such construction as said complainant has given to it, or that the parties thereto meant or intended by it any such results as the said complainant has set out in her said amended bill; but this defendant avers that the said parties to said agreement intended by said agreement merely to bind their respective shares for the payment of their several portions of the debts and legacies of said estate as they had severally assumed them, and also, as by the terms of the will, if the said Charles did not survive his mother, his legitimate child or children would succeed to his rights, and as they could not then know whether the said Charles would survive or not, provided in said agreement that any interest any such child or children under said will might have or be entitled to should be a charge on said land so deeded to the said Charles D. and Letitia Flaglor.

166 25. And this defendant avers that if the said parties had understood that, in executing said partition deeds, they were carrying out said decree, or that it was binding on said Charles, said agreement was entirely unnecessary, as the payment of the debts, and how each should pay, was provided for in said pretended decree; besides, said agreement and partition deeds are wholly inconsistent, in fact antagonistic to said decree, for, by the decree,

said Charles only took an estate for life in remainder, while, by the deeds, he and his mother, who only had a life-estate by the decree, took an estate in fee; and while, by the decree, the child or children of said Charles surviving him took an estate in fee, by the agreement such child or children only took under the will, viz: an estate in the event said Charles did not survive his mother, which, as the said Charles did survive his mother, Eliza Garrett, and Mary Banks, the child or children surviving the said Charles could not by the terms of the will take any estate.

26. And this defendant, further answering, saith that he denies that the said Eliza Garrett, James Crow, and Thomas G.
167 Crow, as executors, held said property in trust for remote, contingent, and uncertain devisees, as the children of said Charles D. Flaglor who might survive him were under said will. But this defendant insists that it was competent, under the circumstances that then surrounded said estate, for the devisees then living to make partition of said estate, which was done, and that it was the duty of the said executors to consummate said partition by deeding the several portions to the parties entitled thereto, which was done in this case, as the share conveyed to the said Letitia and Charles D. Flaglor, as the said Charles was the only child and heir of the said Letitia, would according to the provisions of the will, had the said Charles not survived his mother, have descended to his, the said Charles', children, surviving as the heirs at law of their said grandmother, Letitia Flaglor.

27. And this defendant, further answering, saith that he denies all the false reasoning of the said complainant in her said amended bill, that the absolute deeds of said executors to the said
168 Flaglors on partition of said estate only conveyed to them a life estate, and that said executors, or the grantees of said Flaglors, hold the legal title in trust for the child surviving the said Charles D. Flaglor; and this defendant, for a complete answer to all the reasoning and false assumptions of said complainant in her said amended bill, avers that said Charles having survived by more than two (2) years said Eliza Garrett, Mary Banks and Letitia Flaglor, by the express terms of the 7th clause of said will, became vested in fee simple to his share of said estate in the year 1856, and afterwards, to wit, on the day of A. D. 185 , made a lease of said premises for the term of twenty (20) years to one Albert Losee, as shown in answer to original bill, which said lease said Losee duly transferred and assigned to defendant, Godfrey A. Jessel, to wit, on or about the day of A. D. 185 , and that said Charles D. Flaglor, during his lifetime, received the rent due on said lease, and that since his death said defendant Jessel has paid the rent reserved on said lease to the estate of said Charles D. Flaglor and the guardian of Elizabeth Flaglor, now deceased, and that said money so received

has been used with the knowledge and consent of said
169 complainant and with her approbation in the payment of interest and principal due on the debts of Charles D. Flaglor, and for the support and maintenance of said complainant, and the support and education of said Elizabeth Flaglor, now deceased, and that she is now thereby estopped from denying the validity of said lease.

28. And this defendant, further answering, saith that he denies, as alleged in said admended bill, that said Letitia and said Charles D. Flaglor paid no valuable or other consideration for the said deeds from Eliza Garrett, James Crow, and Thomas G. Crow; on the contrary, he avers that the said Letitia and the said Charles, by assuming to pay $\frac{1}{6}$ of all the debts and $\frac{1}{3}$ of all the legacies of said estate of Augustus Garrett in consideration of partition and giving deeds, gave a valuable consideration therefor; and also that their interests under the will constituted a good consideration for said deeds to them; and for answer to all the reasoning of the said complainant in her said amended bill that the will gave no power to the executors then to make partition and give deeds, it is sufficient to say that it was admitted and conceded
170 by all the parties in interest under said will that owing to change of circumstances and the situation of the property, at that time, in order to save the property a division of the same must take place sooner than was provided for in the will, and this defendant avers that such division was made by the partition deeds as aforesaid, in conformity with the provisions of said will, as near as could be done, and to the satisfaction of all the parties in interest under said will.

29. And that the complainant, widow of said Charles D. Flaglor, since the death of Charles D., has received for her own use large sums of money, to wit, at least dollars, and that she had and received, well knowing the terms and conditions upon which this defendant held said premises, the time of the lease, &c.; and this defendant, answering, shows that during the continuance of the term of said lease now past, owing to the great decline of rents and property, he has paid much more than said premises were reasonably worth, owing to the rental value being fixed during the high prices of rent, in the year A. D. 1857, and
171 that the premises had not at any time but just prior to filing of original bill herein been worth the rent so reserved and paid, but that at and since the filing of said bill, owing to the increase in value of rents and property, said term has become valuable to this defendant, and this defendant is thereby enabled to derive a fair value from the use of the valuable improvements he has erected on said premises, to wit, improvements worth from $15,000.00 to $20,000.00; and this defendant submits that it would be most inequitable and unjust to compel him to pay and hold

property through financial troubles, and then when the property is beginning to realize some income to take it away, and this defendant submits that the complainant is not only estopped therefrom by receiving said rents and using same as aforesaid, but also by the provisions of said will of Augustus Garrett, inasmuch as by the 7th clause of said will the said property was to vest absolutely in fee simple in her said husband, Charles D. Flaglor, upon his surviving Eliza Garrett, Mary Banks, and Letitia Flaglor,
which he did long before giving the lease of the premises in
172 question under which this defendant Jessel claims interest
and title, by means whereof the said Elizabeth Flaglor ceased to have any interest under said will of Augustus Garrett, and has no right, nor has her legal representative any right, to call in question the acts and doings heretofore of the parties who alone, as events have happened, had any interest under said will.

30. And this defendant, further answering, saith that he is ignorant and knows nothing about a deed mentioned in said amended bill, from Letitia Flaglor and Frederick T. Flaglor to Charles D. Flaglor, of certain premises mentioned in said amended bill, neither can this defendant see or understand what said deed, if such a deed was given, has to do with the premises in question or the issues in this case, and this defendant protests that his rights should not be jeopardized by the false or mistaken positions or admissions of the said Letitia or the said Charles D. Flaglor, if any were made by them, inasmuch as the fact that if the said Charles and the said Letitia considered that her interest in said property
was only a life-interest, and they were mistaken, cannot
173 alter or change the title which was vested in the said parties by the deeds of partition and by the will of said Augustus Garrett; besides, the said supposed deed referred to in said bill was given in 1853, if given at all, and before the title had become vested in fee simple in said Charles by the terms of said will, which happened in 1856, when the said Letitia Flaglor, Eliza Garrett, and Mary Banks were all dead, leaving the said Charles surviving; and this defendant, Jessel, derives his right, title, and interest in and to said premises after the happening of above event, and when the title in fee was by the will absolutely vested in said Charles, and while he was in possession claiming title in fee, viz., in A. D. 185 ; and this defendant further avers that neither said Losee nor this defendant had notice of any such deed, and this defendant again denies that said Charles ever admitted the validity of said decree of partition in the said supposed or in any other way; and this defendant further avers that, even if the said Charles had admitted said decree to be in force after it had been entered
without his consent or knowledge, and without the court
174 having obtained jurisdiction of his person at the time of the entry of said decree, such admissions after the decree could

not confer jurisdiction upon the court, and the decree would still be *coram non judice*, and void.

31. And this defendant, further answering, saith that he denies that said Lossee at the time he obtained said lease had notice that said Charles D. Flaglor had not the legal title, but only a life estate; on the contrary, this defendant avers that said Lossee knew that said Charles by the terms of said will had the legal title to said premises; that he also knew that said Charles had been for many years in possession, claiming to be the owner in fee, and was generally reputed to be the owner in fee of said premises, and there was nothing on record to notify him to the contrary, and this pretended decree that the complainant now sets up had been for many years *vacated* and *set aside of record*, and no longer *appeared of record as notice* to purchasers. And the said Lossee at the time of making said lease had the right of said Charles D. to make such lease enquired into by his attorney, who advised him, said Lossee, that he, said Charles D. Flaglor, had such right,
175 whereupon he took said lease and paid the rent reserved thereon.

32. And this defendant avers that the present complainant [*h*]as been guilty of and perpetrated a fraud on this defendant, Jessel, for the reason that since the death of her said husband, Charles D. Flaglor, she has allowed this defendant to go on and make valuable and permanent improvements on said premises, costing some $15,000 or $20,000, and also received more rent from said premises than the same were really worth, and using the same in the payment of her husband's indebtedness and her and her child Elizabeth's support and maintenance as aforesaid, and at the same time well knowing that her daughter, the said Elizabeth, intended to set up and prosecute, as this defendant believes, a fraudulent claim to said property, and if possible rob this defendant, Jessel, of his property, rented in good faith and the rent thereon fully paid, she, the said complainant, receiving a large portion of the rent paid by this defendant, Jessel, for said premises; which is certainly contrary to equity and good conscience.

176 33. This defendant, further answering, says that he denies that the improvements on said premises were made by him, well knowing that the said Charles D. Flaglor's life estate had ceased, and that the said Elizabeth Flaglor was entitled thereto; but, on the contrary, this defendant avers that he believed that the said Charles D. Flaglor owned said property in fee, and this defendant did not know that such a person as Elizabeth Flaglor was in existence, but that he in good faith improved said property, verily believing that he had a good and valid lease for the term above specified.

34. And this defendant, further answering, saith that he denies that the said Charles D. Flaglor went into possession of said prem-

ises under said void decree; but this defendant avers that he took possession under the mutual deeds of partition, and this defendant denies that said Charles would not have got possession without recognizing said decree, for he did take possession under said deeds, repudiating said decree and refusing to be bound thereby.

35. And this defendant, further answering, saith that he
177 denies, as alleged in said amended bill, that said bill of review in the year A. D. 1854, and the decree therein obtained, were devised, procured, and entered by the said Wadhams by any fraud, false pretences, or improper practices of the said Wadhams; but this defendant avers the fact to be that said Wadhams having, before the entry of said decree in A. D. 1854, become the purchaser of a portion of said premises allotted to the said Flaglors of the said Charles D. Flaglor, was advised by his attorneys, Scammon, Jaenegeau & McCagg, *who, as this defendant believes, could not have been fully advised of the facts in the case*, to file said bill of review to set aside said original fraudulent decree, with a view to remove of record what appeared as a cloud on his title, and that said Wadhams, by his said attorneys, in good faith, and as he was professionally advised, caused said bill of review to be filed and said decree obtained, and this defendant avers that all the proper legal steps were taken in said cause to bring the parties into court, and to give the court jurisdiction of all the parties; the allegations in said bill to the contrary are untrue.

178 36. And this defendant, further answering, saith that he denies that the admissions purporting to have been made by the said Charles D. Flaglor in said bill of review filed by Scammon, Jeanegeau & McCagg, attorneys of said Wadhams, are any evidence or proof that such facts are true, because, in the first place, they are only the language used by the attorneys in making up their pleadings and issues in the case, and therefore are not considered binding upon the parties either in law or equity; and, secondly, the admissions, or what purport to be admissions, of said Charles were never made by him, and probably never seen nor heard of by him, but they were made by the attorneys of Wadhams in a suit instituted, as said complainant avers, by the said Wadhams, but without the knowledge of said Losee and this defendant, for his own purposes and objects. And this defendant again denies that the said Charles D. Flaglor ever recognized, sanctioned, or approved of the acts or doings of the said Arnold and Lay in the said partition suit of 1851, or paid them one hundred dollars ($100) or any other sum for such services, or
179 for any services rendered by them in said fraudulent proceedings.

37. And this defendant, further answering, saith that he denies that he is estopped by anything contained in said bill of re-

view for the reasons above alleged, viz., that those admissions are mere matters of pleading used by Scammon, Jeanegeau & McCagg, attorneys of the said Wadhams, in a suit instituted by the said Wadhams, and in no sense are they such solemn admissions made by a party under such circumstances as to amount to an estoppel.

38. And this defendant, further answering, saith that he denies the relevancy of a certain suit set out in said amended bill, if such a suit was ever instituted, of which this defendant is ignorant, wherein the executors of Augustus Garrett, in the month of September, A. D. 1851, unlawfully, corruptly, and fraudulently, as alleged in said amended bill, applied to the Cook County court, and obtained an order of sale of the premises described in said amended bill, not the premises in question, for the payment of the debts of said estate, which said proceedings, as alleged
180 in said amended bill, were wholly unnecessary, in violation of said will, and in fraud of the rights of said children of said Charles D. Flaglor, and that said Charles was also guilty of fraud and corruption in said matter, and that said Charles employed said Arnold & Lay to appear for himself, his mother and father, in said suit, and that said Charles was appointed guardian *ad litem* for his children, and said complainant therefore charges and insists that said Charles thereby recognized and sanctioned the prior acts of said Arnold & Lay in said partition suit, and recognized the rights of his children under and by virtue of said decree in said partition suit; but this defendant denies the conclusions drawn by said complainant, even if the said Charles did, as alleged, appear in said fraudulent suit in the Cook County court, and do the acts therein stated, and this defendant avers that the conclusions drawn by the said complainont are a perfect *non sequit*[*u*]*r*, that the acts and doings of said Charles, as alleged in said amended bill, were done in an unlawful, fraudulent, and void suit, and therefore are a nullity, besides the fact that said Charles employed said Arnold & Lay in a fraudulent suit
181 in the Cook County court, is no evidence that he employed them in another suit, at another time, and in another court, to wit, in the Cook County Circuit Court.

39. And this defendant, further answering, admits, as averred in said amended bill, that said Elizabeth Flaglor did, in the year A. D. 1866, sue out a writ of error to the Supreme Court to reverse the decree under said bill of review entered in 1854, and assigned her errors to said decree in said Supreme Court, and this defendant avers that the only issue to be tried in said Supreme Court on said writ of error brought by said Elizabeth Flaglor was whether said decree of 1854 was or not erroneous; and this defendant avers that the said defendants to the said suit in said Supreme Court filed their plea thereto, confessing that said decree under said bill

ises under said void decree; but this defendant avers that he took possession under the mutual deeds of partition, and this defendant denies that said Charles would not have got possession without recognizing said decree, for he did take possession under said deeds, repudiating said decree and refusing to be bound thereby.

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178 36. And this defendant, further answering, saith that he denies that the admissions purporting to have been made by the said Charles D. Flaglor in said bill of review filed by Scammon, Jeanegeau & McCagg, attorneys of said Wadhams, are any evidence or proof that such facts are true, because, in the first place, they are only the language used by the attorneys in making up their pleadings and issues in the case, and therefore are not considered binding upon the parties either in law or equity; and, secondly, the admissions, or what purport to be admissions, of said Charles were never made by him, and probably never seen nor heard of by him, but they were made by the attorneys of Wadhams in a suit instituted, as said complainant avers, by the said Wadhams, but without the knowledge of said Losee and this defendant, for his own purposes and objects. And this defendant again denies that the said Charles D. Flaglor ever recognized, sanctioned, or approved of the acts or doings of the said Arnold and Lay in the said partition suit of 1851, or paid them one hundred dollars ($100) or any other sum for such services, or
179 for any services rendered by them in said fraudulent proceedings.

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view for the reasons above alleged, viz., that those admissions are mere matters of pleading used by Scammon, Jeanegean & McCagg, attorneys of the said Wadhams, in a suit instituted by the said Wadhams, and in no sense are they such solemn admissions made by a party under such circumstances as to amount to an estoppel.

38. And this defendant, further answering, saith that he denies the relevancy of a certain suit set out in said amended bill, if such a suit was ever instituted, of which this defendant is ignorant, wherein the executors of Augustus Garrett, in the month of September, A. D. 1851, unlawfully, corruptly, and fraudulently, as alleged in said amended bill, applied to the Cook County court, and obtained an order of sale of the premises described in said amended bill, not the premises in question, for the payment of the debts of said estate, which said proceedings, as alleged
180 in said amended bill, were wholly unnecessary, in violation of said will, and in fraud of the rights of said children of said Charles D. Flaglor, and that said Charles was also guilty of fraud and corruption in said matter, and that said Charles employed said Arnold & Lay to appear for himself, his mother and father, in said suit, and that said Charles was appointed guardian *ad litem* for his children, and said complainant therefore charges and insists that said Charles thereby recognized and sanctioned the prior acts of said Arnold & Lay in said partition suit, and recognized the rights of his children under and by virtue of said decree in said partition suit; but this defendant denies the conclusions drawn by said complainant, even if the said Charles did, as alleged, appear in said fraudulent suit in the Cook County court, and do the acts therein stated, and this defendant avers that the conclusions drawn by the said complainont are a perfect *non sequit*[*u*]*r*, that the acts and doings of said Charles, as alleged in said amended bill, were done in an unlawful, fraudulent, and void suit, and therefore are a nullity, besides the fact that said Charles employed said Arnold & Lay in a fraudulent suit
181 in the Cook County court, is no evidence that he employed them in another suit, at another time, and in another court, to wit, in the Cook County Circuit Court.

39. And this defendant, further answering, admits, as averred in said amended bill, that said Elizabeth Flaglor did, in the year A. D. 1866, sue out a writ of error to the Supreme Court to reverse the decree under said bill of review entered in 1854, and assigned her errors to said decree in said Supreme Court, and this defendant avers that the only issue to be tried in said Supreme Court on said writ of error brought by said Elizabeth Flaglor was whether said decree of 1854 was or not erroneous; and this defendant avers that the said defendants to the said suit in said Supreme Court filed their plea thereto, confessing that said decree under said bill

of review was erroneous at the time of its entry in this, in vesting the title in fee absolute in said Charles D. Flaglor, after the life-estate of his mother, Letitia Flaglor, instead of vesting a contingent fee in said Charles upon his surviving his mother, ac-
182 cording to the terms of said will; but they averred in their said plea that said error had been cured by the happening of the event since the entry of said decree, viz., the deaths of Eliza Garrett, Mary Banks, and Letitia Flaglor, and the survivorship of the said Charles, and therefore by the terms of said will of Augustus Garrett the fee simple had become vested in said Charles, and said decree was now right, and the error therein at the time of its entry had been cured, and the decree ought to stand; and this defendant further avers that in drawing and framing said plea it was deemed advisable by the counsel employed to defend said suit to set out in their said plea the original decree and the proceedings therein, not, as falsely assumed by the said complainant in her said amended bill, as admitting their truth or validity, but merely with a view to show the Supreme Court the many errors and irregularities and great injustice and fraud committed on said Charles by the said original decree, which the decree under the bill of review was designed to remedy; and this defendant protests against the course pursued by the said complainant through-
183 out her said amended bill, of setting out parts of pleadings in another suit, and which were mere pleadings to make up the issue therein, as solemn admissions of the defendant in this suit by which they are estopped. And this defendant denies that the said complainant has truly set out in her said amended bill the pleadings in said Supreme Court on said writ of error; and he avers that such matters as are set out are disconnected and give an erroneous view of the pleadings therein, and are at most only the language used by the attorneys in forming the issues in that suit, and in no respect the admissions of the defendant in this suit; that the language so used in framing those issues is true.

40. And this defendant, further answering, admits, as alleged in said amended bill, that said Supreme Court reversed said decree under said bill of review, but he denies, as asserted in said amended bill, that this defendant is by said decision estopped from claiming that the court in said original decree had no jurisdiction of said Charles D. Flaglor, or that said Charles D.
184 never employed or authorized said Arnold & Lay to enter his appearance or file an answer for him in said suit; but this defendant avers that said Supreme Court simply decided that as it appears by the record in the original suit that *said Charles consented to the original decree*, he had no right to file a bill of review; and, therefore, they reversed the decree under the bill of review, but remanded the case to the court below, for the express purpose to give the defendants an opportunity to prove that the said Charles never assented to said decree in said original suit,

and said court also remarked that they could see no reason why the said Charles should give up an estate in fee contingent, given him by the will of Augustus Garrett, for a contingent estate for life as given by said decree, and furthermore said court expressly refrained from giving any opinion as to the rights of the grantees of said Charles; and this defendant craves leave to refer to said opinion of the Supreme Court and the order remanding the cause as a perfect answer to all the false reasoning and sophistry of said complainant in her said amended bill why the defendants should be estopped from making any defence in this suit.

185 41. And this defendant, further answering, saith that he ought not to be estopped nor in any manner bound by the decree originally rendered in said partition, because he says that it appears therefrom that said Elizabeth Flaglor, daughter of said Charles, in right of whom the said complainant now herein claims, &c., was in no way or manner a party to said pretended agreement, or to said cause, nor to the decree or decrees therein rendered by the said circuit court.

42. And this defendant alleges that at the time and times of the commencement of said partition suit, and of the rendition of the said decree therein, the said Elizabeth was, and for a long time afterwards continued to be, an infant under lawful age; that although named in said petition for partition as a party against whom, amonst others, summons and relief was prayed, yet that she, the said Elizabeth, was not at any time served with summons therein; and that at the time and times last aforesaid she, the said Elizabeth, was not a resident of the State of Illinois, but then resided with her parents at or near Newburgh, in the State

186 of New York. And this defendant further avers that the said Elizabeth was in no way or manner notified by publication of the pendency of said partition suit, nor in that manner, nor in any other way, brought before the said court as a party defendant in said cause; and that said circuit court acquired no jurisdiction, actual or constructive, over the said Elizabeth, so as in any way or manner to make her a party to the said several decrees and orders made therein, or by the same in any way or manner to bind her or conclude her in respect of the matters thereby pretended to be adjudicated; but, on the contrary thereof, this defendant saith that, by the record and proceedings had in the said partition suit, it appears that the same was commenced in said circuit court, and the said bill or petition filed on the 3d day of March, 1851, and on that day summons was issued therein, returnable on the 4th Monday of March, 1851, and that on the same 3d day of March, 1851, the day of its issue, the said summons was returned into court by the sheriff of said county with his return endorsed thereon that the said Elizabeth was not, nor was

187 the said Charles D., found within his said county; that thereupon a pretended notice was prepared for publication

and published in the *Chicago Journal*, or *Weekly Journal*, upon the following days, to wit, the 3d, 18th, 17th, 24th, and 31st days of March, 1851, requiring her, the said Elizabeth, and also the said Charles D., to be and appear in the said circuit court on the said 4th Monday of March, viz., the said 31st day of March, 1851, to answer the bill of complaint filed in said cause, or that the same would then be taken as confessed against them; that said notice was and is substantially defective, and did not state that summons had been issued, nor the time or place of the return thereof, as required by law; and that the said publication thereof was of itself wholly insufficient to bring the said Elizabeth, as well as the said Charles D., into court as parties to said cause; and that no other notice or publication of notice of said suit was therein had or given her.

43. And this defendant further saith that the said Elizabeth in no way or manner afterwards became or was a party to said
188 cause, or bound by the decrees and orders therein rendered, and that the said Elizabeth had any other or *alias* summons issued to her from said court, or effort used to make service in said cause on her; and so this defendant will insist that, as against the said complainant herein, he, this defendant, ought not to be bound or concluded in respect of all or any of the matters in the said partition suit contained, or in respect of the matters therein and thereby alleged to have been found and adjudged.

44. And this defendant, further answering, saith that he was and is such lessee of said premises, in good faith, for valuable consideration, and without notice, as hereinbefore stated, and that the said pretended agreement in the said bill here alleged, and the said pretended consent to said partition decree, and the said pretended uses now claimed by the said complainant to have been thereby declared in favor of said Elizabeth were, and each and every one of them was, without any valuable consideration in that behalf, and if made or given as supposed by said complain-
189 ant in her said bill, that the same and every of them were and are covinous and fraudulent as against this defendant, as the subsequent lessees for valuable consideration, and contrary to the statute, and the intent and meaning thereof, in such case made and provided.

45. And this defendant doth and will insist thereon and on the benefit of the statute in that behalf to the same extent as if they had pleaded the same in bar herein.

46. And this defendant denies all unlawful combination and confederacy in the said bill charged. Without that, any other matter or thing material or necessary for this defendant to make answer unto, and not herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant.

47. All which matters and things this defendant is ready to aver,

maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed, with their costs and charges
190 in that behalf most wrongfully sustained.

GODFREY A. JESSEL,
Per HUGH A. WHITE, *Deft's Sol'r.*

VAN H. HIGGINS, *Counsel.*

191 Filed December 19, '67. 17,274.

STATE OF ILLINOIS, } *ss.*
COOK COUNTY, }

Superior Court of Chicago, December Term, A. D. 1867.

LUCY C. FLAGLOR, Executrix and sole Devisee of Elizabeth Flaglor, deceased,
vs.
GODFREY A. JESSEL. } In Chancery.

The several answer of Godfrey A. Jessel, one of the defendants to the amended bill of complaint of Lucy C. Flaglor, complainant, sole devisee and executrix of complainant, Elizabeth Flaglor, now deceased.

1. This defendant now, and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception or otherwise which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised is material or necessary for him to make answer unto.

2. This defendant, answering, saith that he admits that some time in the month of December, A. D. 1848, Augustus Garrett departed this life, seized in fee simple of the lands and
192 premises in said bill mentioned and described. That he left no child or children or descendants of such alive, and that he left a widow, Elizabeth Garrett, since deceased, and that said Augustus Garrett died testate, leaving a will duly executed, disposing of and devising his entire estate, both real and personal, and that said will was, on the 26th day of February, A. D. 1849, duly probated in the office of the clerk and court of the probate justice of the said county, and that the copy of the said will and the records of the proceedings therein are duly set forth in said bill, or properly referred to therein, and for greater certainty are herein again referred to, as being on file in said court, and among the records thereof. And this defendant craves leave to refer to the same, if it should become necessary so to do. This defendant, further answering, denies that in the early part of the year A. D. 1851, or at any other time, an agreement or any agreement for the partition of said estate of said Garrett were made or entered into by the said Charles D. Flaglor, named in said will, with Eliza Garrett, or any of the devisees in the will of said Garrett, or with

any other person or persons whomsoever, by which he was to sell only a life estate in said premises, or that he should consent to any decree limiting his estate under said will.

3. And this defendant avers and states the fact to be that the pretended agreement and the pretended matters of agreement or assent to said proceeding were all fraudulently made up against the said Charles D. Flaglor, and not by his consent, as falsely alleged in complainant's said bill of complaint. That the said
193 proceedings were instituted and commenced by the said Eliza Garrett, James Crow, and Thomas G. Crow, who were the executrix and executors of the estate of said Garrett and co-devisees under his will, against the said Charles D. Flaglor and others, alleging, as was the fact, that at the time of the commencement of the said proceedings the said "Charles D. Flaglor was a non-resident of the State of Illinois, and proceeding to issue a summons, which was never served, upon the said Charles D. Flaglor, and pretending to make an affidavit of the non-residence of the said Charles D. Flaglor, but which affidavit was entirely null and void, and was sworn to as made in said cause, and was entitled in said cause before any suit had been commenced, and was wholly void, and thereupon, without any sufficient affidavit having been filed to lay any foundation for a notice of publication, did then proceed to give a pretended notice to the said Charles D. Flaglor, the complainant, Elizabeth Flaglor, and others, but which notice and affidavit this defendant insists and shows were entirely insufficient to give the court jurisdiction of the person or property of either the said Charles D. Flaglor or the complainant Elizabeth Flaglor, or power to make any order or decree affecting the property or either property or rights of property in said will devised, a copy of which said affidavit and notice of publication is hereunto annexed, and marked respectively Exhibits A and B, and prays it to be taken as a part hereof.

4. This defendant, further answering, says that the said
194 complainant, or some one of them, well knowing the premises and well aware of the invalidity of said proceedings, but contriving how they might obtain their decree of partition without delay, and with a view of conferring jurisdiction upon the court as to the parties named as defendants in said partition proceedings, (all of whom were non-residents of the State of Illinois,) and to hasten a decree of partition as sought by them, did, without any right or authority so to do, employ as attorneys and solicitors in the said court to appear in said cause, and to represent the said Charles D. Flaglor, the Hon. Isaac N. Arnold, and his partner, George W. Lay, Esq., who were both then and there solicitors of said court, and did employ them to appear in said cause and file in the name of the said Charles D. Flaglor an answer therein; and this defendant says he is informed and believes that said firm

of Arnold & Lay, believing that they were duly authorized to appear for the said Charles D. Flaglor to represent his interests, and believing, as was represented to them, that the proceeding was an amicable one, and that said Charles D. Flaglor had authorized said complainants to employ counsel to represent the said Charles D. Flaglor, and thus the matter was understood and agreed to by the said Charles D. Flaglor, they, the said Arnold and Lay, entered their appearance in said cause as the attorneys and solicitors of said Charles D. Flaglor, and did then and there by such supposed authority, and by no other, and without the consent or knowledge of the said Charles D. Flaglor, and without any communication with him, or any one having any authority or right to act for him, (except the authority of the complainants, as
195 before stated,) did file the answer of said Charles D. Flaglor in said cause; and this defendant denies that the said Charles D. Flaglor at any time did directly or indirectly authorize any appearance in said cause or employ any one to appear for him, or even make any agreement whatever in said cause or in regard to the same, or even in any manner consent to the decree therein.

5. This defendant, further answering, says that the said proceedings in partition were obtained and prosecuted by improperly, illegally, and fraudulently imposing upon the court an answer prepared by said complainants or by some one for them, or filed by their procurement, admitting away the rights of the said Charles D. Flaglor, and consenting for him, without his authority or knowledge, to the decree in said cause rendered, and that for this reason, and for the want of jurisdiction by the court over the person and property of the said Charles D. Flaglor at the time of the rendition of said decree, the same was and is erroneous, fraudulent, and void, and ought not to be executed and should be set aside.

6. This defendant, further answering, says that soon after the rendition of said decree in said cause the said Charles D. Flaglor came into the State of Illinois to look after his rights and interests, and having been informed of the unauthorized proceedings repudiated the same and expressed great dissatisfaction thereat, and refused to be bound by the said proceedings, or in any manner to recognize the same; whereupon the parties complainant in
196 the said partition suit met with the said Charles D. Flaglor and arranged with him to deed to him the said property in fee, according to the terms of the aforesaid will and not under said decree; and said parties did thereupon deed and re-deed severally to each other the said property without in any manner noticing the said decree or alluding to it. By means of which said deed a copy whereof is hereunto annexed, marked "Exhibit C," and prayed to be taken as a part hereof, the said Charles D. Flaglor became the owner of the estate in fee.

7. This defendant, answering further, states that the said Charles D. Flaglor took the possession of said property so devised to him

and deeded to him by his co-devisees, and thereupon held and enjoyed the same in severalty under the will of said Garrett and under the deed and agreement of partition, and under the will of said Garrett and not under the decree of partition, as is falsely alleged in said complainant's bill of complaint.

8. This defendant, further answering, says that some time after, on taking counsel, the said Charles D. Flaglor was advised, with the view of preventing any and all questions as to his title, to have the said decree reversed to show that he did not *acquiesce* in the same, and to show affirmatively that he repudiated the said decree of partition made as aforesaid upon the pretended answer of the said Charles D. Flaglor; that for this purpose the grantee or grantees of said Charles D. Flaglor, on the 16th day of April, A. D.
197 1853, filed in the Circuit Court of Cook County, State of Illinois, a bill of review to vacate, set aside, and reverse the said decree; and such proceedings were thereupon had after legal service of the parties, said Elizabeth Flaglor, now deceased, who filed the original bill herein, being a party defendant in said proceedings, duly notified, and for whom a guardian *ad litem* was duly appointed, and that the said decree was *reversed and set aside* and *declared a nullity*, which said last-mentioned decree continued in full force and effect until the day of , A. D. 1866, when a writ of error to reverse the said last-mentioned decree so rendered on said bill of review was sued out of the Supreme Court of the State of Illinois, and at the April term thereof, A. D. 1866, the decree so rendered in said bill of review as aforesaid was reversed by the said supreme court for the reason that the decree of partition *was apparently made by consent of the parties.* And this defendant avers that no other consent appears by the record in said proceedings, or was in fact ever given, except the recitals in complainants' bill of complaint and the answer of said Charles D. Flaglor, filed by the procurement of said complainants as hereinbefore stated, and the proceedings based upon the said answer so wrongfully put in without authority as aforesaid.

9. This defendant, further answering, says that upon reversal of said decree so made upon said bill of review, as before
198 stated, the said supreme court remanded the said cause for further proceedings therein, with a view that the merits of said cause might be further shown to the court.

10. This defendant, further answering, says that the said bill of review is now pending and undetermined, and that no final order or decree has been made therein, and that the same is open to further proceedings, and that, although by reason of the death of the said Charles D. Flaglor the same may have to be reviewed, and although the executors and heirs of the said Charles D. Flaglor having an interest adverse to this defendant's may not revive said proceedings, this defendant is advised that he can obtain an order

of revival on filing a supplemental bill showing his rights and interest in the lands in said decree mentioned.

11. This defendant therefore asks that the proceedings in this cause may be stayed a reasonable time to enable him to obtain an order of revival, and on such order being obtained that the hearing of this cause may be suspended until the final determination of the proceedings on said bill of review filed to reverse the decree upon which the bill in this cause is founded.

12. This defendant, further answering, says that the said Charles D. Flaglor departed this life in the month of December, A. D. 1858, leaving a widow, and that James Crow was duly appointed his executor. That the said Charles D. Flaglor left his said widow, Elizabeth Flaglor, his sole heir and devisee;
199 that in consequence thereof the said proceedings on the said bill of review will have to be revived; and this defendant charges that the said heir and devisee, having an interest adverse to this defendant, neglects and refuses to revive the same, whereby it will be necessary to obtain special order of review in favor of the parties in interest and of the *terre tenants* of the lands and premises purchased of and leased by the said Charles D. Flaglor, as hereinbefore and hereinafter set forth, and that to that end to file a supplemental bill, setting forth the facts herein stated.

13. This defendant, further answering, says that the decree under which said complainant claims title in this cause, and which she seeks to enforce and have carried out against this defendant, was *wholly reversed* and *set aside* by the order, decree, and determination of the circuit court of the county of Cook and State of Illinois, sitting as a court of chancery, at the April term thereof, A. D. 1854, in a certain cause in said court therein pending, *in which the said Charles D. Flaglor's grantees, in the name of Charles D. Flaglor, filed a bill of review, making said Charles D. Flaglor complainant* against James Crow, Thomas G. Crow, Eliza Garrett, Elizabeth Flaglor, Frederick T. Flaglor, Mary Banks, & Letitia Flaglor, to reverse, amend, and set aside the said decree, and this defendants states that all of said defendants were notified of the pending of said suit in due form of law, or duly summoned into court in said proceedings, that a guardian *ad litem* was duly appointed
200 for said Elizabeth Flaglor, and that upon the hearing such proceedings were thereupon had at the April term of said court, A. D. 1854, that the said original decree was thereupon set aside, annulled, and declared of no effect, which said decree of reversal so annulling, &c., said first decree, as aforesaid, continued and remained in force unreversed and unimpeached from the said day of , A. D. 1854, until the day of , A. D. 1865, when for the first time any movement was made in said cause, and a writ of error was sued out, being the sole and only

step taken in the said cause since the said decree reversing and annulling said former decree had been rendered. That while said former decree was reversed and annulled, and while the said Charles D. Flaglor was holding the estate under the will of said Garrett, and under the conveyance of his co-devisees, the said Charles D. Flaglor, on the second day of September, A. D. 1857, made, executed, and delivered to one Albert Losee a lease of the said premises, to wit, lot twenty-five, (25,) in block number nine, in Fort Dearborn addition, for a term of years, to wit, twenty years, being from the first day of May, A. D. 1858, for, during, and until the first day of May, A. D. 1878, and that said Albert Losee afterwards, to wit, on the 12th day of March, A. D. 1858, duly sold, assigned, transferred, and set over unto said defendant, Godfrey A. Jessel, all his right, title, and interest in and to said lease and the premises therein described, and that said defendant, Jessel, is now the legal
201 owner and holder of said lease.

14. And this defendant insists and claims that the said proceedings, even if they could be regarded as *lis pendens*, were not duly prosecuted so as to entitle said complainant to defeat the right of this defendant, who was a *bona fide* purchaser of said lease by reason of the pendency of said proceedings and without any other notice, and this defendant denies that he was bound to take notice of said proceedings by reason of the pendency thereof, and this defendant denies that the same were pending in such a manner as to charge this defendant or said Losee with notice; and this defendant avers and claims that said proceedings ceased to be notice as soon as the final decree had been rendered in the case, and that if said Losee was chargeable with notice, he and this defendant would be and are entitled to the benefit of the facts as they really existed, and that upon the facts, as now shown to the court, the original decree under which complainant claims was *fraudulent* in law and *wholly void* as between said complainant and this defendant, and ought not to be enforced or executed, and the same was in gross and palpable violation of the rights of said Charles D. Flaglor under the will of said Augustus Garrett, deceased.

15. This defendant, further answering, admits that, by the terms of said decree so made under the circumstances hereinbe-
202 fore set forth, the said lands were decreed to be partitioned as in said complainant's bill is alleged.

16. This defendant here again denies that the same was done by agreement or with the consent of said Charles D. Flaglor, and this defendant denies that either before said bill was filed, or at that time or afterwards, he, the said Charles D. Flaglor, ever consented to said decree, or to any partition of said lands, giving him only a life interest in said estate and lands. And this defendant

avers and insists that, whatever was done and all that was done by the complainants therein, or by the attorneys and solicitors in said cause, or by Messrs. Arnold & Lay, was done without the knowledge or consent of the said Charles D. Flaglor.

17. This defendant, further answering, denies that the said Charles D. Flaglor was duly served with process, as is falsely alleged in said complainant's bill of complaint, and denies that he in any manner ever appeared in said cause, or authorized any person to appear for him. And this defendant alleges that the answer filed in said cause was filed therein without the knowledge or consent of said Charles D. Flaglor, and by the procurement of the complainants therein or some or one of them. And this defendant denies that the said Charles D. Flaglor ever ratified or approved said proceedings or decree or any part of the same, or that he ever authorized any one to approve of the same,
203 or do any act whatever in affirmance thereof. And this defendant alleges that the said Charles D. Flaglor took possession of said lands and premises in severalty, as he lawfully might do under and by virtue of the deeds so made to him by his co-devisees under the will of said Augustus Garrett, as aforesaid, and not under the decree of partition.

18. This defendant, further answering, denies that the said decree of partition was ever acted on or carried out in any way, or that deeds were ever executed under said decree of partition; and this defendant denies that the legal title to said premises passed to said complainant under said decree, or that any legal title could then pass by a proceeding in chancery in partition without a conveyance by deed executed by the parties or by a commissioner duly authorized to execute a deed by decree of court.

19. And this defendant insists that even if said decree of partition was a valid one, it could not establish a legal title to the lands in said decree mentioned, and this defendant now insists as a perfect answer to the claim of said complainant that she, the said complainant, is not now and never was the holder of the legal title to said lands, and that this defendant holds under a *bona fide* lessee of said lands and premises for a valuable consideration fully paid and satisfied to the holder of the legal title, & his heirs & executors, without notice of any kind whatever of any
204 claim, legal or equitable, in favor of said complainant or any other person.

20. And this defendant, as such *bona fide* holder and lessee of said premises, claims the protection of this honorable court in the same manner as if the same had been specially pleaded. This defendant, further answering, says that said Albert Losee on the second day of September, A. D. 1857, leased in good faith of the said Charles D. Flaglor, who then & previously thereto was or pretended to be seized in fee simple of the premises, and was in the

actual possession of the real estate in said bill mentioned and described, free from all incumbrances whatever; and the said Albert Losee believing that the said Charles D. Flaglor was so seized and entitled, and that the said premises were in fact his own, and that he had full power, right, & lawful authority to lease the same, did so lease the same of said Charles D. Flaglor on the day and year last aforesaid, and that said Flaglor did then and there duly make, execute, and deliver to said Losee a lease of said premises as before stated, for a term of twenty years from the first day of May, A. D. 1858, to wit, till May 1st, A. D. 1878, for and in consideration of the sum of fifteen hundred dollars per annum for the first three years of said lease, and the sum of seventeen hundred and fifty dollars per annum for the next succeeding four years of said lease, and for the balance of said term, to wit, at the
205 expiration of the first seven years, the rent for the next thirteen years to be appraised by disinterested persons, chosen one by each party in interest, and they, if they fail to agree, to choose an umpire.

21. And it was also provided in said lease that said Charles D. Flaglor was to purchase the building which might be erected on said premises so leased, at the expiration of said term, at a value to be affixed by appraiser chosen as above provided, as will more fully appear by said lease, reference thereto being made.

22. And this defendant would further show that after the making of said lease, and during the lifetime of said Charles D. Flaglor, said Albert Losee afterwards, to wit, on the 12th day of March, A. D. 1858, (said Losee) duly assigned, transferred, and set over all his right, title, and interest in said lease, and to said premises therein described, to this defendant.

23. And this defendant would further show that said Charles D. Flaglor collected and recovered the rent maturing on said lease as it became due during his lifetime, and that after his decease this defendant has paid the rent, as it became due, to one James Crow.

24. And this defendant has been informed by said Crow and others, and verily believes the fact to be, that the money so paid by him on said lease to said Crow has been paid, laid out, and expended to and for the use and benefit of said Elizabeth Flaglor, now deceased, and has been used for her support, maintenance, and
206 education, which ought in equity to estop said complainant from claiming possession of said premises as against this defendant, and *and* at all events ought to charge said complainant with such amount so received and estop her from collecting the same over again from this defendant. And this defendant avers and so charges the fact to be, that he has paid more rent for said premises for the term of said lease, already expired, than the same were reasonably worth, and that by reason of

having and holding said lease this defendant has suffered great loss and damage, and that the said Crow and said complainant have well known this fact; and that it was not until after said premises began to pay a small dividend over and above taxes and insurance, to wit, during the year A. D. 1866, that said complainant so far as this defendant knew had, or pretended to have, any right, title, interest, claim, or demand to said premises or any part thereof. And this defendant avers the fact to be that when he so purchased said lease, and for some eight years thereafter, to wit, until during the year A. D. 1866, he had no notice or intimation in any way or form of any claim, or pretended claim, of said complainant to said premises; that he purchased same in good faith, and paid the rent from time to time, as the same matured on said lease, as has always continued so to do. And this defendant also avers that said Losee had no notice whatsoever of any interest of said complainant in said premises; and this defendant claims that he is a *bona fide* holder
207 of said premises, without notice of any claim or interest of said complainant therein; all which matters and things this defendant doth aver and set up in bar of the relief prayed for in this cause in the said complainant's said bill of complaint; and this defendant prays the same benefit of the same as if he had set up the same matters by plea.

25. And this defendant, further answering, says that at the time of the making of said lease aforesaid, by said Charles D. Flaglor, to said Albert Losee, said decree under which said complainant now sets up a claim to the said lands and premises in said bill mentioned had been reversed and set aside by a valid decree entered by the Circuit Court of Cook County, Illinois, on a bill of review filed to reverse said decree by one of the grantees of said Charles D. Flaglor, and in his, said Charles D. Flaglor's, name and against said complainant and the other parties named in said unjust bill as defendants, all of whom were duly served with process or brought into court by due notice of publication, and that a guardian *ad litem* was duly appointed for said Elizabeth Flaglor, now deceased, who filed his answer for said Elizabeth Flaglor; and this defendant further states and avers that said decree remained and continued in full force and effect and unreversed for more than twelve years, to wit, from April 11, A. D. 1854,
208 until A. D. 1866, at which last-mentioned time the last decree upon said bill of review was itself set aside by the Supreme Court of the State of Illinois, thereby reviving, as is pretended by said complainants, the first decree under and by virtue of which said complainant now claims title to the land in controversy.

26. But this defendant insists that the said Charles D. Flaglor did not have and hold said land & premises, and did not lease

same as the owner thereof by virtue of said decree or decrees; but that he held, owned, and leased same by virtue of his estate in fee simple therein derived through & from the will of said Augustus Garrett and deeds from his co-devisees under said will, and that it could not be dive[r]sted thereafter so as to affect *bona fide* holder of said lands and premises by any change or setting aside of said decrees or either of them.

27. And this defendant insists that the suing out of a writ of error was the commencement of a *new suit*, and not the *continuous* proceedings of the *old one*, and that upon the rendition of the final decree in the case on the bill of review, filed as aforesaid in said circuit court, the *lis pendens* was terminated, and that thereupon said former decree ceased to be notice in any manner whatever, or to effect or bind any property thereby, and that the lapse of twelve years without any steps taken to set aside said decree and the receipts of rents, issues, and profits during that period, on the part of said Elizabeth Flaglor and her guardian, is a complete
209 bar to the right of said complainant to the possession of said premises during the continuance of this defendant's leasehold interest therein, and that by reason of the great lapse of time which complainant allowed said decree to remain in full force and effect, without any attempt to change or reverse same, she is now debarred from setting up and claiming that said suit is still pending, and that this defendant had notice thereof; and this defendant insists that he ought not to be affected by the reversal of said decree, to which he was not a party and of which he had no notice; and that the court of equity has no jurisdiction or power to revive said original decree so as to affect the rights of persons not holding by virtue thereof, or as against *bona fide* holders of said lands & premises, so as to charge them with notice of the pendency of said suit; all which matters and things this defendant doth aver and insist upon in bar of the relief sought by said complainant in the same manner as if the matters herein alleged and set forth had been pleaded by way of plea instead of answer.

28. This defendant, further answering, says that said complainant is not entitled, even if said decree of partition should be held binding upon this defendant, to more than an undivided interest in said lands, and that the necessary parties are not before this honorable court & have not been made parties to this proceeding; that by the terms of said decree of partition the fee simple
210 of said lands was vested in the children of said Charles D. Flaglor, "if he died leaving any child or children," and this defendant insists that by the terms of said decree said children took an immediate interest & vested estate in said lands, subject to be defeated upon one contingency only, viz., their death before the death of the said Charles D. Flaglor; that said contingency not happening, the estate decreed to them was never divested,

and this defendant avers that at the time of the entering of said decree there was living at least two children of said Charles D. Flaglor, and, as this defendant is informed and believes, more than two children were then living; and this defendant avers and states that other legitimate children were born to the said Charles D. Flaglor after the date of said decree, who by law would be let into an inheritance of a portion of said estate, lands, and premises, as in case of a will devising to children an estate of inheritance.

29. And this defendant insists that all and each of said children under said decree were entitled to share in said premises the same as said complainant; and this defendant further states that said children are now dead, having died intestate during minority, without children, are unmarried, and prior to the death of said Charles D. Flaglor; and that said Charles D. Flaglor and the mother of said children survived each of them except said complainant, and that the mother is still living, & has not been made a party
211 to these proceedings; and that upon the death of said children and each of them said Charles D. Flaglor & his said wife each inherited a share in the estate of said child in and to the premises in question.

30. And this defendant avers that said Charles D. Flaglor was so seized of said interest, (if any,) derived through said children under said decree, at the time of making said lease, and that said interest (if any) passed under said lease, to be held and used, according to the terms of said lease, by this defendant.

31. But this defendant here again denies that said Charles D. Flaglor ever took or held said premises under said decree, or that he ever pretended so to take and hold same. But this defendant avers that he took possession of and held said premises under and by virtue of the will of said Augustus Garrett and deeds from his co-devisees in said will. And this defendant denies that he or said Albert Losse ever pretended to take or hold said lands and premises under and by virtue of said decree, or ever in any manner claimed here, as is falsely alleged by said complainant.

32. And this defendant avers that after the decree of partition aforesaid the several co-devisees voluntarily deeded to each other their several interests in said land and premises, and voluntarily divided the same between themselves, according to the will of said Garrett, and not according to the provisions of said decree,
212 as is falsely alleged in said complainant's bill.

33. And this defendant further states that they were not governed in by said decree in said division, but by the will of said Garrett, and that at the time of making said conveyances, and for a long time thereafter, said Charles D. Flaglor had no knowledge of the provisions of said decree setting off to him a life estate in the lands and premises, and that as soon as he, said Flaglor, learned said fact he repudiated said decree, and refused to be bound thereby.

34. And this defendant here again denies that either said decree of partition or will of Augustus Garrett gave the said lands and premises to the surviving child of the said Charles D. Flaglor, but this defendant insists that the will contingently, and the first decree of partition absolutely, vests and gives the property to the children of the said Charles D. Flaglor, who thereby took a vested estate (if they took anything) by said decree, which could be divested only upon the death of all the children of said Flaglor, and this defendant hereby avers that there were other children of said Charles D. Flaglor living at the time of the entry of said decree beside said Elizabeth Flaglor, and that he afterwards had other children born unto him, all of whom took under said decree as well as complainant, (if either took anything,) and this defendant insists that their legal heirs should be made parties hereto.

213 35. This defendant would, further answering, show that he is informed and believes that the said Eliza Garrett, Letitia Flaglor, and Mary Banks have each departed this life, and that said Letitia Flaglor died prior to the death of said Charles D. Flaglor, and before the making of the lease to said Albert Losee by said Charles D. Flaglor, which lease is now held and owned by this defendant; and this defendant submits that after the death of said Letitia Flaglor said Charles D. Flaglor had full right and lawful authority to sell and dispose of his interest in the estate of said Augustus Garrett as he should choose, and that he was seized thereof in an estate of fee simple absolute, and that by his election he became so seized and possessed of the lands and premises in question in this cause.

36. And this defendant would further show that said Eliza Garrett, Letitia Flaglor, and Mary Banks each departed this life prior to filing said bill of review on behalf of complainant, to wit, long before the 1st of January, A. D. 1858.

37. This defendant, further answering, denies that they unlawfully and fraudulently entered into and intruded into the possession of said premises, and also denies that the fair rental value of said premises per year from December 23d, A. D. 1858, to the present time would exceed the sum of three thousand dollars per year.

214 But this defendant avers that he has paid the rent due thereon as the same became due and payable, and this defendant denies that he is bound to account and answer to said complainant for the value of said premises, and he also denies that said complainant or any one on her behalf ever demanded of this defendant the possession of the lands in said bill mentioned and described, or any part thereof.

38. And this defendant, further answering, denies that said complainant, or any one on her behalf, ever demanded of this defendant the rents, issues, and profits due on said premises, unless the same was done by said James Crow, who has collected said rent and receipted for same as it matured from time to time.

39. And this defendant, further answering, admits that the complainant, Elizabeth Flaglor, has departed this life since the filing of the original bill in this cause; but as to her age or her making a will or the devising of her estate this defendant has no knowledge, but asks that the complainant be required to prove the same.

40. And this defendant would further show unto your honor, farther answering, avers and states that he has made extensive and valuable improvements on the lands and premises in said bill mentioned and described, and has expended large sums for taxes, assessments, insurance, and necessary repairs in order to keep said property free from incumbrance and to keep it from going to waste and decay and deteriorating in value, and for the
215 beneficial use and enjoyment of the same. That said improvements under and by virtue of a provision in the said lease, which provided that at the expiration of said lease said improvements should be taken by said Charles D. Flaglor, his heirs or assigns, at a value then to be fixed by arbitrators chosen by the respective parties to said lease.

41. And this defendant avers and claims that if said complainant shall be decreed by this honorable court to be entitled to recover said property from this defendant and from those holding by, through, and under him as tenants, said complainant should be decreed to pay to this defendant the cost and value of such building; also the taxes, insurance, and assessments paid thereon, and also to account to this defendant for all moneys received from said Crow from this defendant, and used in supporting, maintaining, and educating said Elizabeth Flaglor, now deceased; and also to account to this defendant for all moneys received from him for the use and rent of said premises, now invested or held for the use of or in the name of said complainant, and that said complainant may be decreed to account with and for the same and pay the same to this defendant as a condition precedent to the recovery by her of said lands and premises aforesaid.

42. And this defendant denies all and all manner of un-
216 lawful combination and confederacies wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) GODFREY A. JESSEL,
by HIGGINS & WHITE, *his Solicitors.*

HUGH ANLITTE, *of Counsel for Def't.*

217 "Exhibit A."

ELIZA GARRETT, JAMES CROW, and THOMAS G. CROW
vs.
LETITIA FLAGLOR, FREDERICK T. FLAGLOR, CHARLES D. Flaglor, Elizabeth Flaglor, Lucy Louisa Flaglor, and Henry Banks.

J. A. Bross, being duly sworn, says that he has been informed and believes the above-named defendants all reside out of said State.

(Sig.) JOHN A. BROSS.

Subscribed and sworn to before me, this 1st day of March, 1851.

(Sig.) LEWIS D. HOWARD, *Clerk.*

218 "Exhibit B."

STATE OF ILLINOIS, } *ss.* Of the March Special Term, 1851.
COOK CIRCUIT COURT. }

ELIZA GARRETT, JAMES CROW, AND Thomas G. Crow
vs.
LETITIA FLAGLOR, FREDERICK F. FLAGLOR, Charles D. Flaglor, Elizabeth Flaglor, Lucy Louisa Flaglor, & Mary Banks.

Affidavit having been filed in the office of the clerk of the circuit court of said county that the above-named defendants reside out of the State of Illinois, you, the said defendants, Letitia Flaglor, Frederick T. Flaglor, Charles D. Flaglor, Elizabeth Flaglor, Lucy Louisa Flaglor, and Mary Banks, are hereby notified that the above complainants, Elizabeth Garrett, James Crow, and Thomas G. Crow, filed their bill of complaint against you, the said defendants, in the office of the clerk of the circuit court of said county, on the third day of March, A. D. 1851.

Now, unless you, the said defendants, shall personally appear before the said Cook County Circuit Court on the first day of the next special term thereof, to be holden at the court-house in the city of Chicago, in said county, on the fourth Monday of
219 March instant, and plead, answer, or demur to the said complainants' bill of complaint, the same will be taken as confessed against you, and the matters and things therein prayed for will be decreed accordingly.

(Sd.) L. D. HOARD, *Clerk.*

MORRIS & GOODRICH, *Compl'ts Solicitors.*

This is to certify that the annexed notice was published in the Chicago Journal, a weekly newspaper printed in the city of Chicago, county of Cook, and State of Illinois, four times, to wit, for four successive weeks, as follows: The first insertion on the

3d day of March, 1851, in vol. 9, No. 371, and the last insertion 31st day of March, 1851, of said paper.

Dated at Chicago, 7 May, 1851.

(Sd.) R. S. & L. C. WILSON,
Publishers Weekly Journal.

220 This indenture, made this twenty-ninth day of May, in the year of our Lord one thousand eight hundred and fifty-one, between Thomas G. Crow and Mary Louisa, his wife, and James Crow and Sarah A., his wife, of the city of Chicago, county of Cook, & State of Illinois, parties of the first part, and Charles D. Flaglor, of New Burgh, county of Orange, and State of New York, and Letitia Flaglor, wife of Frederick T. Flaglor, of the said town of New Burgh, county of Orange, and State of New York, parties of the second part, witnesseth that the said parties of the first part, in consideration of one dollar in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have remised, released, sold, conveyed, and quit-claimed, and by these presents do remise, release, sell, convey, and quit-claim unto the said party of the second part, their heirs and assigns forever, all the following described lot or parcel of land, situate, lying, and being in Chicago, county of Cook aforesaid, and known and described as follows, to wit: The north half of block No. seventy-three, (73,) school section addition to Chicago; also lot No. twenty-five, (25,) in block No. nine, (9,) in Fort Dearborn addition to Chicago; also the west half of the east half of lot No. two, (2,) in block No. thirty-one, (31,) original town of Chicago; also the west quarter of lot eight, in block No. twenty-one, (21;) also the west quarter of fractional lot No. one, (1,) in block No. twenty-one, (21,) O. T. C., including that part of the original alley running between said lots; also that part of lot No. one, (1,) in block No. eighteen, (18,) original town of Chicago, commencing twenty two (22) feet from the cor-
221 ner of Clark and South Water streets, and running thence west on a line with South Water street twenty (20) feet, thence south seventy (70) feet, thence east twenty (20) feet, thence north seventy (70) feet to the place of beginning; also that part of lot No. fourteen, (14,) in block No. thirteen, (13,) Fort Dearborn addition to Chicago, commencing twenty (20) feet north of the south-west corner of said lot, running thence north on State street twenty (20) feet, thence east one hundred and fifty (150) feet, thence south twenty (20) feet, thence west one hundred and fifty (150) feet, to the place of beginning.

The said parties of the first part hereby convey and transfer to the said parties of the second part all reversionary interest they may have in and to the above-described premises, under and by virtue of the will of the late Augustus Garrett, deceased; to have and to hold the same, with all and singular the appurtenances and privileges thereto belonging or in any wise appertaining, and all the estate,

right, title, interest, and claim whatsoever of the said parties of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said parties of the second [part,] their heirs and assigns forever.

And the said parties of the first part, for themselves, their heirs, executors, and administrators, do covenant and agree to and with the said parties of the second part, their heirs and assigns, that they will warrant and forever defend the aforesaid premises to be free and clear of all claim or claims of every and any person
222 or persons claiming or to claim, by, through, or under them, and none other.

In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

(Sd.)	JAMES CROW,	[SEAL.]
(Sd.)	SARAH A. CROW,	[SEAL.]
(Sd.)	THOMAS G. CROW,	[SEAL.]
(Sd.)	MARY L. CROW,	[SEAL.]

Signed, sealed, and delivered in presence of—
HENRY W. CLARK.

STATE OF ILLINOIS, } *ss.*
COOK COUNTY, }

I, Henry W. Clarke, a notary public in and for said county, in the State aforesaid, do hereby certify that James Crow & Sarah A. Crow, his wife, and Thomas G. Crow & Mary L. Crow, his wife, who are personally known to me to be the same persons whose names are subscribed to the annexed deed, appeared before me this day in person & acknowledged that they had signed, sealed, and delivered the said instrument of writing as their free act & deed, for the uses and purposes therein expressed. And the said Sarah A. Crow, wife of the said James Crow, and the said Mary L. Crow, wife of the said Thomas G. Crow, having been by me examined separate & apart, & out of the hearing of their said husbands, & the contents & meaning of said instruments of writing having been by me made known & fully explained to them, they acknowledged that they had freely and voluntarily executed the same without any compulsion of their husbands, and relin-
223 quished their dower to the land & tenements therein mentioned, & that they do not wish to retract the same.

Given under my hand & official seal, this 30th day of May, A. D. 1851.

[L. S.] HENRY W. CLARKE, *Notary Public.*

224 This indenture made this twenty-ninth day of May, in the year of our Lord one thousand eight hundred & fifty-one, between Eliza Garrett of the city of Chicago, county of Cook

& State of Illinois, party of the first part, and Letitia Flaglor, wife of Frederick T. Flaglor, & Charles D. Flaglor of the town of New Burgh, county of Orange & State of New York, of the second part, witnesseth that the said party of the first part for & in consideration of the sum of one dollar to the said party of the first part in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged and confessed, has remised, released, sold, conveyed, and quit-claimed & by these presents do remise, release, sell, convey, and quit-claim unto the said parties of the second part, their heirs and assigns forever, all the right, title, interest, claim, and demand which the said party of the first part has in an[*d*] to the following described lots or parcels of land situate, lying, and being in the county of Cook & State of Illinois, to wit: The north half of block No. seventy-three, (73,) school section addition to Chicago; also lot No. twenty-five (25) in block No. nine (9) in Fort Dearborn addition to Chicago; also the west half of the east half of lot No. two (2) in block No. thirty-one, (31,) O. T. Chicago; also the west quarter of lot No. eight (8) & the west quarter of fractional lot No. one (1) in block No. twenty-one, (21,) O. T. C., including that part of the original alley lying between said lots; also that part of lot No. one (1) in block
225 No. eighteen, (18,) O. T. Chicago, commencing twenty-two (22) feet from the corner of Clark & South Water streets and running thence west on a line with South Water street twenty (20) feet, thence south seventy (70) feet, thence east twenty (20) feet, thence north seventy (70) feet to the place of beginning; also that part of lot No. fourteen (14) in block No, thirteen, (13,) Fort Dearborn addition to Chicago, commencing twenty (20) feet north of the southwest corner of said lot, running thence south on a line with State street twenty (20) feet, thence east and [*one*] hundred and fifty (150) feet, thence west one hundred and fifty (150) feet to the place of beginning.

To have and to hold the same, together with all and singular the appurtenances thereunto belonging or in any wise appertaining, and all the estate, right, title, interest, and claim whatsoever of the said party of the first part in law or equity to the only proper use, behoof, and benefit of the said party of the second part, their heirs and assigns forever.

In witness whereof the said party of the first have hereunto set her hand & seal the day and year first above written.

ELIZA GARRETT. [SEAL.]

The words "wife of" in the 4th line from the top & the words "20" feet in 20th line from top interlined, & all the writing in the description part after the word "beginning" in the 23d line from top, erased before signing.

HENRY W. CLARKE.

226 The last will and testament of Elizabeth Flaglor.

Be it known by these presents, that I, Elizabeth Flaglor, now of Chicago, Cook County, Illinois, being of sound and disposing mind and memory, but mindful of the frailty and uncertainty of human life, do make and publish this my last will and testament, hereby revoking all former wills by me at any time heretofore made.

I appoint my mother, Lucy C. Flaglor, to be sole executrix of this my will.

I direct that she shall not be required to give any other security as executrix than her own individual bond.

I direct that all my just debts be paid.

I give and devise to her, my said mother, Lucy C. Flaglor, her heirs and assigns forever, all my real and personal estate of whatever nature and wheresoever situate, including the lands, premises, and property owned or claimed by me under the will of Augustus Garrett, deceased, and under the decree and proceedings for partition of his estate made and entered of record in and by the Cook County Circuit Court, A. D. 1851, and all my estate, right, title, and interest therein, together with the back and future rents, issues, and profits thereof. The property last above named being that claimed and owned by me under said will and decree in partition, and being that described in said decree as limited to me, in remainder is hereby devised in trust to continue the prosecution and institution of all needful and proper judicial proceedings for the recovery thereof, and to make good, ratify, and execute my contract and agreement with Arthur W. Windett, for the recovery of the same.

I hereby adopt, sanction, and ratify all contracts and agreements heretofore by me made with said Windett in relation to the said premises and the recovery thereof, and all acts, suits, and proceedings had or taken for the recovery of said property, or any part thereof.

In witness whereof, I, the said Elizabeth Flaglor, to this my last will and testament, containing two pages, including this, have hereunto set my hand and seal this first day of August, in the year of our Lord one thousand eight hundred and sixty-seven, having also affixed my signature to each of the preceding pages.

ELIZABETH FLAGLOR. [L. S.]

Signed, sealed, published, and declared by the said Elizabeth Flaglor, the testatrix, as and for her last will and testament, in the presence of us, who, at her request and in her presence, and in the presence of each other, have subscribed our names as witnesses.

SAMUEL E. UNDERHILL.
JULIA E. UNDERHILL.

Proved in open court this 11th day of October, A. D. 1867.

JAMES B. BRADWELL, *Judge.*

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

The people of the State of Illinois, to all whom these presents shall come, greeting:

Know ye, that whereas Elizabeth Flaglor, late of the county of Cook and State of Illinois, died on or about the tenth day of August, A. D. 1867, as it is said, after having duly made and published her last will and testament, a copy whereof is hereunto annexed, leaving at the time of her death property in this state, which may be lost, destroyed, or diminished in value if speedy care be not taken of the same, and inasmuch as it appears that Lucy C. Flaglor has been appointed executrix, in and by the said last will and testament, to execute the same, and to the end that the said property
227 may be preserved for those who shall appear to have legal right or interest therein, and that said will may be executed according to the request of the said testatrix, we do hereby authorize her, the said Lucy C. Flaglor, as such executrix to collect and secure all and singular the goods and chattels, rights and credits which were of the said Elizabeth Flaglor at the time of her decease, in whosesoever hands or possession the same may be found in this state, and well and truly to perform and fulfill all such duties as may be enjoined upon her by the said will, so far as there shall be property, and the law charge her, and in general, to do and perform all other acts which now are or hereafter may be required of her by law.

$50.00 U. S. Rev. Stamps. } Witness Edward S. Salomon, clerk of the county court of said county, and the seal thereof, at the court-house in the city of Chicago in said county, this sixteenth day of October, A. D. 1867.

[L. S.] EDW'D S. SALOMON, *Clerk.*

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

I, Edward S. Salomon, clerk of the county court of Cook County, in the state aforesaid, do hereby certify that the within is a true and correct copy of the letters testamentary issued to Lucy C. Flaglor, now in force and properly on file in my office.

[5ct. stamp.] In witness whereof I have hereunto set my hand and the seal of said county court, this sixteenth day of October, A. D. 1867.

[L. S.] EDW'D S. SALOMON, *Clerk.*

228 Valuation of the real estate in the city of Chicago belonging to the estate of A. Garrett, deceased, by Wm. Jones, James H. Rees, and Wm. H. Brown:

	S. Lot.	Lot.	Block.	Valuation.
Original Town, east 44 feet of wharfing lot	.....	1	.....	$4000
" 22 feet on S. W. street by 50 feet deep S. E. corner	.....	1	17	3000
" 22 feet on S. W. street by W. adj.	.....	1	17	2100
" W. ½ of E. ½ 70 feet deep	.....	1	18	4500
" " " "	1	8	19	5000
" " " "	2	8	19	3800
229				
Original W. ½ of E. ½ 70 feet deep	3	8	19	3800
" " " "	5	8	19	2000
" 34 feet on Franklin street by 80 ft. deep	.....	5	20	2700
" E. ½ of E. ½ including alley	.....	1	21	2800
" W. ½ of E½	.....	1	21	1700
" E. ½ of W. ½ and part of 8	.....	1	21	1700
" W. ½ " "	.....	.....	.....	1500
" E. ½ of E. ½ and part of 7	.....	.....	.....	1300
" W. ½ of W. ½ "	.....	6	.....	2500
" E. ½ of W. ½ "	.....	.....	.....	2800
" W. ½ of W. ½ "	.....	7	.....	3250
" E. ½ of W. ½ "	.....	.....	.....	3800
" W. ½ of E. ½ "	.....	.....	.....	4000
" E. ½ of E. ½ 125 feet deep	.....	.....	.....	2600
" W. ½ of W. ½ "	.....	8	.....	2600
" E. ½ of W. ½ "	.....	.....	.....	2500
" E. ½ of E. ½ 100 feet deep	.....	1	31	2700
" W. ½ of E. ½ "	.....	.....	.....	2000
" E. ½ of W. ½ "	.....	.....	.....	2000
" W. ½ of W. ½ "	.....	.....	.....	2000
" 20 by 80 feet, S. end	.....	.....	.....	1200
" 20 by 80 N. adj. S. 20 feet	.....	.....	.....	1000
" 20 by 80 N. adj. S. 40 feet	.....	.....	.....	1000
" 20 by 80 N. adj. S. 60 feet	.....	.....	.....	1000
" W. ½ of E. ½	.....	2	.....	3000
" E. ½ of E. ½	.....	3	.....	3000
" W. ½ E. ½	.....	.....	.....	3000
" E. ½ of W. ½	.....	3	31	3250
" W. ½ of W. ½	.....	.....	.....	3250
" E. ½ of E. ½ 100 feet deep	.....	4	.....	2250
" W. ½ of E. ½ "	.....	.....	.....	2250
" E. ½ of W. ½	.....	.....	.....	2250
" W. ½ of W. ½	.....	.....	.....	3500
" S. 20 feet	.....	.....	.....	2500
" 20 feet N. and adj. S. 20 feet	.....	.....	.....	2200
" 20 feet N. and adj. S. 40 feet	.....	.....	.....	2000
" 20 feet N. and adj. S. 60 feet	.....	.....	.....	2000

230	S. Lot.	Lot.	Block.	Valuation
Original W. ½ of E. ½	.....	7	.....	3000
" E. ½ of W. ½	.....	.....	.....	3000
Fort Dearborn Add'n	.....	25	9	4000
" 24 feet on State street by 90 feet deep N. W. cor	.....	.....	13	2500
Fort Dearborn Add'n.				
" 20 ft. by 90 S. and adj. N. 24 ft	.....	.....	.....	1400
" 20 ft. by 90 S. and adj. N. 44 ft	.....	.....	.....	1400
" 20 ft. by 90 S. and adj. N. 64 ft	.....	.....	.....	1400
" 20 ft. by 90 S. and adj. N. 84 ft	.....	.....	.....	1400
" 20 ft. by 150 S. and adj. N. 104	.....	.....	.....	2000
" 20 ft. by 150 S. and adj. N. 124	.....	.....	.....	2000
" 20 ft. on Randolph street by 90 ft. deep E. of W. 90 ft	.....	.....	.....	900
" 20 ft. on Randolph street E. and adj	.....	.....	.....	1000
" 20 ft. on Randolph street E. and adj	.....	.....	.....	1200
963 Sch. Sec. Add'n, 20 7-12 by 75 with 4 ft. alley to Adams street	.....	.....	.....	.....
" 20 7-12 ft. S. of N. end of	.....	1&2	140	2000
" Part of N. ½ of block E. of Ellsworth street	.....	.....	73	6500
" Part of N. ½ of block W. of Ellsworth street	.....	.....	73	2800
Wabansea	.....	11	.....	5000
"	.....	15	.....	700
" Part of Sec. 22, 267 ft. on State and running ½ way to Wabash avenue	.....	.....	.....	2100
" Part of Sec. 12, 267 ft. on Wabash avenue and running ½ way to State street	.....	.....	.....	1900
" Part of Sec. 22, 267 ft. on Wabash avenue and running ½ way to Michigan avenue	.....	.....	.....	1900
" Part of Sec. 22, 267 ft. on Michigan avenue and running to Lake street	.....	.....	.....	4500
Total	.....	.....		$163,900

231 Complainant introduced as witness, John Link, who testified: I knew Wadhams, defendant, several years before the litigation began; I was on cordial terms with him; he used often to come into the office of Mr. Garrett's executors and con-

verse about purchasing property, particularly that in question, and asked our advice and opinion as to the value of it. I was in his life time acquainted and connected with Mr. Garrett; had been in his employ many years before his death. I never made the statement to James Crow which he testified to that Mr. Windett and I were to have half the property claimed by Elizabeth Flaglor; there were no grounds for making such a statement. Mr. Wadhams before buying the property in dispute frequently talked with me and Crow about it. I told him that Charles D. Flaglor had only a life estate in the property, and that the fee belonged to his children. Charles D. Flaglor disposed of the tools and machinery to Moses after the partition. I mean the tools and machinery mentioned in the short bill of sale from the executors to Flaglor offered in evidence. The interchangeable receipts between the executors and the Flaglors given in evidence by complainant were given at or about the time of the partition in 1851, and were part of the same general settlement. These receipts shown to me were signed by Charles at the time of settlement, acting as agent for his father and mother. I was present at the time they were executed and delivered. They were in pursuance of the general settlement then made between the parties. I have no recollection of telling Wadhams in 1850 or 1851 of the partition. I presume he must have heard it talked of in the office. I never heard Charles D. Flaglor make any claim to the property based on the opinion of John W. Brown; I should have been likely to know it if he had. I was intimate with Charles, and boarded with him, and took part in the partition, acting on behalf of Mrs. Garrett. A settlement was made in 1853 or 1854 between Charles and his father. Charles gave his parents a mortgage on several lots, and then the management of his mother's property was given to Charles. The mortgage was given as a provision for his parents. I know all these people intimately. Frederick T. Flaglor came here in the summer of 1850; he was an old man and could not travel in the winter. I don't think he was here in the winter of 1852. In the fall of 1850 I introduced Charles D. Flaglor to Arnold and Lay. I went with him in the spring of 1851 to their office, not to introduce him, but simply to accompany him. He was a rather bashful man among a certain class of people who were different from his ordinary associates.

Arthur W. Windett also testified: I have known George W. Lay since 1849. I met him in Chicago early in April, A. D. 1866, on the north side of Randolph street, near LaSalle street. I said to him I was then about to argue a case in the supreme court for a child of Charles D. Flaglor, and mentioned that she claimed under the partition decree of 1851, in which his firm had appeared as counsel for Charles D. Flaglor. I said to him that the other side charged that Grant Goodrich had blundered in
232 the construction of Garrett's will as regarded Charles D.

Flaglor's interest, and that in consequence of Goodrich's mistake the decree had been entered giving to Charles a life estate only instead of a fee simple, which they claimed he was entitled to under the will, and should have had. I then asked Mr. Lay, since from his connection with the proceedings in partition he knew all the facts, if there was any foundation for that charge against Grant Goodrich. Mr. Lay at once said "that is all nonsense." He said, "we," referring to the firm of Arnold and Lay, "investigated the whole matter as counsel on behalf of Charles Flaglor of his rights under Garrett's will, and as a result of our deliberate examination came to the conclusion that Charles was only entitled to a life estate; and we informed (or advised) him as his counsel that a life estate was all he was entitled to under the will, and that his rights were the same as the decree gave him." Mr. Lay said this was before the decree was entered; that Flaglor knew all about it, and agreed that the decree should be entered the way it was, and that it was no fault at all of Goodrich's. Mr. Lay's manner was frank and positive; he spoke without any hesitation, and as if the occurrence was fresh in his memory. Our conversation lasted but a short time; his impressions were, if anything, a little stronger than my statement of them.

Cross-examined.

I conducted the cross-examination of Mr. Lay in this case. I put all the questions to him, including 108 and 110 cross-interrogatories, as mentioned in his deposition. I did so with a full view of my responsibility in doing so, and with the contents of the record upon which the same were based. I wrote the letters to him referred to in his deposition to which his letters exhibits to his depositions were the replies; to one letter, written in 1870, asking Mr. Lay for information, he made no answer.

I did not show the opinion signed Arnold, Larned and Lay to Mr. Arnold. It was not in my possession. It was not the opinion of Arnold and Lay, but of Larned. I made no allusion to it in examining Mr. Lay.

In speaking about the advice they had given to Charles D. Flaglor about his interest under the will, Mr. Lay used the plural pronoun "we." Lay said they had examined the whole question for Charles as to his rights under the will, and informed him of the conclusion which they had come to as a result of that examination, which was, that he was entitled to only a life estate under the will, and that the fee belonged to the children.

On my personal responsibility I wrote in one of my letters to Mr. Lay, in January, 1868, that the sources of information were being corrupted, and appealed to him for a full statement of the facts. My conversation in 1866 with Mr. Lay lasted three, four, or five minutes. I never knew of the existence of the paper "A," exhibit to the deposition of I. N. Arnold, till it was produced upon Mr. Arnold's examination as a witness in this case.

233 STATE OF ILLINOIS, } ss.
COOK COUNTY. }

Be it remembered, that on this day, to wit, on the 15th day of September, A. D. 1851, the same being one of the days of the September term, 1851, of the County Court of Cook County, present thereat Hon. Henry L. Rucker, judge, Edward S. Kimberley, clerk, the following, among other proceedings, were by and before said court had and entered of record, to wit:

AUGUSTUS GARRETT, Estate of.

This day also came into court Eliza Garrett, executrix, and James Crow and Thomas J. Crow, executors, of the last will and testament of Augustus Garrett, deceased, by Grant Goodrich, their solicitor, who presents to the court his petition for the sale of certain real estate therein described, and also presents the certificate of publication of his intention to present his petition at this term of the court, and moves the court that the defendants named in said petition may be parties thereto.

Whereupon, it was ordered by the court that said defendants appear and answer said petition on Thursday, the 18th instant, at 9 A. M.

And afterwards, to wit, on the 18th day of September, A. D. 1851, the following, among other proceedings, were by and before said court had and entered of record, to wit:

In the matter of petition to sell real estate.

GARRETT, AUGUSTUS, Estate of.

This day appear the defendants in the above-entitled cause by George W. Lay, their solicitor, and file their answer consenting to the prayer of the petition of Eliza Garrett, executrix, and James Crow and Thomas J. Crow, executors, of the last will and testament of Augustus Garrett, duly filed with the court on the 15th day of September, 1851, for the sale of certain real estate therein described.

Whereupon the court ordered that said consent filed this day by defendants' counsel be entered of record.

And afterwards, to wit, on the 20th day of September, A. D. 1851, the following, among other proceedings, were by and before said court had and entered of record, to wit:

In the matter of petition for sale of real estate.

GARRETT, AUGUSTUS, Estate of.

This day comes into court George W. Lay, solicitor for defendants in the above-entitled cause, and petitions the court for leave to withdraw his answer filed with the court on the 18th day of September, 1851, and have leave to amend the same, and said solicitor also moves that a guardian *ad litem* be appointed for Eliza-

beth and Lucy Louisa Flaglor, minors, and that a guardian *ad litem* be appointed to Augustus Garrett Seaman, a minor, and all heirs-at-law to the estate of Augustus Garrett, deceased.

234 Whereupon, leave was granted to amend answer, etc., and the court appointed Charles D. Flaglor guardian *ad litem* to Elizabeth Flaglor and Lucy Louisa Flaglor, minors, heirs of the estate of Augustus Garrett, deceased, and Edward S. Kimberly was appointed guardian *ad litem* to Augustus Garrett Seamen, one of the heirs at law to Augustus Garrett, and a minor.

Geo. W. Lay, solicitor, etc., then again filed his answer to said petition, consenting for said defendants to the prayer of said petition.

Said answer of the guardian *ad litem* being in words and figures as follows:

Cook County Court, of the September term, A. D. 1851, before the Hon. Henry L. Rucker, judge of said court.

IN THE MATTER OF THE PETITION OF JAMES CROW, THOMAS G. CROW, executors, and ELIZA GARRETT, executrix, of the estate of A. GARRETT, deceased.

These defendants, Elizabeth Flaglor and Lucy Louisa Flaglor, infants, by their guardian *ad litem*, Charles D. Flaglor, for that purpose appointed by this honorable court, answering say, that they neither admit nor deny the facts as set forth in the said petition and leave the said petitioners to make proof thereof.

ELIZABETH FLAGLOR,
LUCY LOUISA FLAGLOR,
By their guardian *ad litem*, CHARLES D. FLAGLOR.

September 22d, 1851.

ARNOLD & LAY, *Solicitors.*

[This paper is not marked filed by the clerk of the county court, but was found among the files.]

And afterwards, to wit, on the 26th day of September, A. D. 1851, the following, among other proceedings, were by and before said court had and entered of record, to wit:

GARRETT, AUGUSTUS, Estate of. } In matter of petition for sale of real estate.

And now this day again came the complainants, by Grant Goodrich, their solicitor.

And it appearing to the court that said defendant, Mary Banks, has failed to file her answer herein, it is therefore ordered by the court that said petition, and the matter and things therein contained, be taken as confessed as against said Mary Banks and all persons claiming or to claim by, through, or under her.

And it further appearing that the said infants, Elizabeth Flaglor and Mary Louisa Flaglor, have filed their answer herein by their

guardian *ad litem*, Charles D. Flaglor, and also that Augustus Garrett Seaman, an infant, by his guardian *ad litem*, Edmund S. Kimberly, has filed his answer herein, neither admitting or denying the allegations of said petition, but claiming the rights of said minor by requiring proof of the charges in said petition.

And it further appearing, Letitia Flaglor, Frederick T. Flaglor, and Charles D. Flaglor have filed their answers herein, admitting the charges in said petition contained and consenting to the granting of the prayer of said petition.

And it further appearing by reference to the records and files and proceedings of this court now herein referred to, and examined, and that said executors have filed their inventory and appraisement bill of personal effects of said deceased, and also their sales bill thereof, and that there are debts and claims against said estate unsatisfied after the application of the available assets thereto, and that it is necessary to sell real estate of said decedent to satisfy said claims and debts.

And it appearing that due publication of the intention of the presentation of this petition and its purpose had been published for four weeks successively in the Western Citizen, a weekly newspaper, published in the city of Chicago, and not less than six weeks prior to the present term of this court. And that the proceedings of said executors have in all respects been in conformity with law. And it having further been shown to this court that said Augustus Garrett died seized of some interest in the real estate described in said petition.

It is therefore ordered and decreed that said executors proceed in pursuance of law to sell of the real estate in said petition described, the

"North half of block seventy-three (73) in the School Sec-
235 tion addition to Chicago, also the west half of the south-
west quarter of section five (5) in township thirty-seven (37) north, range fourteen, east of the third principal meridian, at public vendue and in the manner by statute prescribed, and if the proceeds arising from the sale thereof shall prove insufficient to pay said debts against said estate, then to proceed and also sell the west half of the east half lot No. 2 in block thirty-one, original town of Chicago. And that said executors report their actions and doings had upon this order to this court at the next session after any such action or actions.

And afterwards, to wit, on the 7th day of January, 1852, the following notice and certificate of publication was filed in this office, to wit:

Executors' Sale.

Notice is hereby given that under and by virtue of an order of sale made by the county court of Cook County, on the 26th day of September, A. D. 1851, at a regular term then and there being

holden, we shall expose for sale at public vendue on the 22d day of January, A. D. 1852, at 11 o'clock of that day, at the door of the court-house in the city of Chicago, county of Cook, and State of Illinois, the following described real estate, lying and being in said county of Cook, to wit:

"The north half of block seventy-three, in the School Section addition to the city of Chicago, in the following divisions, to wit: First, all that portion of said north half of said block lying between Ellsworth street and the Chicago River, and second, the said north half of said block lying between Ellsworth street and Beach street, also the west half of the south west quarter of section (5) in township thirty-seven, range fourteen.

Terms of sale.—One-half of purchase-money in six months and one-half in one year from sale, with six per cent. interest thereon, to be secured by bond with good security for the payment thereof and a mortgage on the land.

Eliza Garrett, executrix, and James Crow and Thomas G. Crow, executors of estate of A. Garrett.

Grant Goodrich, solicitor.

We do hereby certify that the appended notice was published six weeks successively in the Western Citizen, a newspaper printed by us weekly in the city of Chicago, county of Cook and State of Illinois. The first insertion being in the paper dated January 6, 1852.

EASTMAN & CO., *Publishers.*

And afterwards, to wit, on the 6th day of April, 1852, the following order was by said court made and entered of record, to wit:

GARRETT, AUGUSTUS, }
Estate of. }

This day comes into court James Crow, one of the executors of the estate of Augustus Garrett, deceased, and presents to this court his report of the sale of certain real estate sold under a previous order of this court, which, in substance, is as follows: that on the 22d of January, A. D. 1852, he offered for sale at the door of the court-house in the city of Chicago, at public vendue, the west half of the southwest quarter of section five (5) in township thirty-seven (37) north, range fourteen (14) east of the third principal meridian, which was sold to John Link for the sum of one dollar per acre, amounting to the sum of eighty dollars.

But having been enjoined previous to the day of sale from selling the north half of block seventy-three (73) they were unable to sell the same.

Said report of sale of real estate belonging to said deceased being in words and figures as follows, to wit:

To the county court of Cook County, Honorable Henry L. Rucker, judge.

The undersigned, Eliza Garrett, executrix, and James Crow and Thomas G. Crow, executors of the last will and testament of Augustus Garrett, deceased, respectfully report. That under and by virtue of and in pursuance of the order of this court, made in the matter of the estate of Augustus Garrett, deceased, on the 26th day of September, in the year of our Lord one thousand eight hundred and fifty-one, whereby as such executrix and executors, they were authorized for the purpose of paying the indebtedness of the estate of said Augustus Garrett, deceased, to sell the north half of block seventy-three (73) in the School Section addition to Chicago, and the west half of the southwest quarter of section five (5) in township thirty-seven (37) north, range fourteen (14) east of the third principal meridian, and if the same or the proceeds
236 thereof should prove insufficient to pay said indebtedness, then to sell the west half of the east half of lot (2) in block thirty-one (31) in the original town of Chicago, they advertised in due form of law, their intention to expose for sale and sell the said north half of block seventy-three (73) and the west half of the southwest quarter of section five (5) in township thirty-seven (37) north, range fourteen (14) east of the third principal meridian, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and fifty-two, at public vendue, at the door of the court-house in the city of Chicago, in said county of Cook, and that a notice stating the time and place of said sale and the manner of holding the same was published previous to the date of said sale for the space of six weeks successively, by putting up such notice as aforesaid in at least four of the most public places in the county of Cook, where said premises are situate, and where to be sold, and also by causing a similar notice to be published in the nearest newspaper in said county of Cook.

And the undersigned further report that on the day, as aforesaid, appointed for said sale, they offered said premises for sale at public vendue at the place specified in said notice, and the said west half of the southwest quarter of section five (5) in township thirty-seven (37) north, range fourteen (14) east of the third principal meridian, was struck off and sold to John Link for the sum of one dollar per acre, amounting in the aggregate to the sum of eighty dollars, said sum of one dollar per acre being the highest and best bid therefor, and they have accordingly made and delivered a deed therefor to said John Link.

But that having been previously enjoined, by a writ of injunction issued out of the Cook County Circuit Court upon a bill filed therein by Daniel B. Hinman, Samuel Dutton, Henry P. Lloyd, and Julius D. Pratt from selling said north half of block seventy-three (73), they were unable to sell the same, said bill setting up an equitable title to said block in certain persons named therein.

And the undersigned further report that the proceeds arising

from said sale were largely insufficient to pay the indebtedness of the estate of the said Augustus Garrett, deceased, and at that time remaining due and unpaid, and thereupon, for the purpose of discharging such indebtedness, and in further pursuance of said order of the twenty-sixth of September, in the year of our Lord one thousand eight hundred and fifty-one, they advertised in due form of law their intention to expose for sale and sell the said west half of the east half of lot two (2) in block thirty-one (31) in the original town of Chicago, on the third day of March, in the year of our Lord one thousand eight hundred and fifty-two, at public vendue, at the door of the court-house in the city of Chicago, in said county of Cook, and that a notice containing the time and place of holding said sale, and the manner of the same was published previous to the date of said sale for the space of six weeks successively by putting up such notice in at least four of the most public places in the county of Cook, where said premises are situated and where to be sold, and also by causing a similar notice to be published in the nearest newspaper in said county of Cook.

And the undersigned further report that on the day aforesaid appointed for said sale they offered said premises last described for sale at public vendue at the time and place specified in said notice, and William Briggs bid for the same the sum of two thousand eight hundred and fifty dollars ($2,850), and the same was then and there struck off to him, that being the highest and best bid therefor, and he became the purchaser thereof at that price, and paid to us the money therefor.

And the undersigned further report that they have executed to said William Briggs a deed for said west half of the east half of lot two (2) in block thirty-one (31) in the original town of Chicago, but that the same is not yet delivered.

All of which is respectfully submitted. Dated Chicago, March 3d, 1852.

ELIZA GARRETT.
JAMES CROW.
THOMAS G. CROW.

STATE OF ILLINOIS, } *ss.*
COUNTY OF COOK. }

I, John G. Gindele, clerk of the County Court of Cook County, in the State of Illinois, do certify that the foregoing is a true and correct copy of all the orders of the county court, answer of guardian *ad litem*, advertisement and certificate and reports of all papers on file in the matter of the executrix and executors' application at the September term, 1851, to sell real estate belonging to the estate of Augustus Garrett, deceased, all of which appears from the files and records of my office, and I certify that the petition for the sale of the aforesaid real estate is not among the files of my office.

In witness whereof I have hereto set my hand and affixed the seal of said county court at my office in said county, this 19th day of December, A. D. 1870.

[SEAL.] J. G. GINDELE, *Clerk.*

237 It is stipulated and agreed that this printed copy may be used as and for the deeds which appear in the transcript of this record, pages 399 *et seq.*, by the clerk in the transcript for the Snpreme Court of the U. S., and that they need not nor either of them be copied in connection with the order of May 21, 1878, or elsewhere, but may be referred to by either party for every purpose whenever their deeds appear in evidence or otherwise, proper reference being made to this stipulation.

GEO. HERBERT,
Solr. for C. Parpart.
ARTHUR W. WINDETT,
Solr. for Mr. Gay, et pro se.
ISHAM & LINCOLN,
Solr. for Conn. Mutual Life Insurance Co.

CROWS TO E. GARRETT.

This indenture, made this twenty-ninth day of May, in the year of our Lord one thousand eight hundred and fifty-one, between James Crow and Sarah A., his wife, and Thomas G. Crow and Mary Louisa, his wife, of the city of Chicago, county of Cook, and State of Illinois, parties of the first part, and Eliza Garrett, of the same place, party of the second part: Witnesseth, that the said party of the first part for and in consideration of the sum of one dollar to the said parties of the first part in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, *ha* remised, released, sold, conveyed, and quit-claimed, and by these presents do remise, release, sell, convey, and quit-claim unto the said party of the second part, her heirs and assigns forever, all the right, title, interest, claim, and demand which the said party of the first part has in and to the following-described lots or parcels of land situate, lying, and being in the county of ———, and State of ———, to wit:

That part of township thirty-nine (39), section twenty-two (22), N. range fourteen (14) east of the third principal meridian, fronting on State street two hundred and sixty-seven (267) feet and lying between the lands owned by the heirs of Susannah Drake on the north, and James D. Sherman on the south, and running thence east through to Lake Michigan, excepting the two hundred and sixty-seven (267) feet fronting on Michigan avenue, running west equi-distant to Wabash avenue, deeded by Augustus Garrett to R. W. Patterson and Ira M. Weed; also, lots number three (3) and four (4) in block No. thirty-one (31), O. T. Chicago; also the south twenty (20) feet of lot No. one (1), in block No. thirty-one (31), O. T. C.; also, the west half of the east half and the east of the west half of lot No. seven (7), in said block thirty-one (31), O. T. C.; also, lot number *No.* seven (7), and fractional lot No. two

(2) in block No. twenty-one (21) including that part of the original alley in the rear of said lots; also lots No. one (1), two (2), three (3) and five (5), of Campbell's subdivision of lot No. eight (8) in block No. nineteen (19), O. T. C.; also that part of lot No. five (5) in block No. twenty (20), O. T. Chicago, commencing at a point ninety (90) feet from the corner of Franklin and Lake street, and running thence north on a line with Franklin street thirty-four (34) feet, thence east eighty (80) feet, thence south thirty-four (34) feet, thence west eighty (80) feet to the place of beginning.

1858 To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever, of the said parties of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said *part* of the second part, *their* heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JAMES CROW. [Seal.]
SARAH A. CROW. [Seal.]
THOMAS G. CROW. [Seal.]
MARY L. CROW. [Seal.]

Sealed and delivered in presence of—The words "Thomas G. Crow of the" in second line from top erased, and the word "part" in twentieth line from top, and the words "O. T. Chicago," in twenty-second line from top, interlined before signing.

HENRY W. CLARKE.

1862 FLAGLOR TO GARRETT.

This indenture, made the twenty-ninth day of May, in the year of our Lord one thousand eight hundred and fifty-one, between Letitia Flaglor and Frederick T. Flaglor, by their attorney, Charles D. Flaglor, and Charles D. Flaglor for himself, of the town of New Burgh, county of Orange, and State of New York, parties of the first part, and Eliza Garrett, of the city of Chicago, Cook county, and State of Illinois, party of the second part.

Witnesseth that the said parties of the first part for, and in consideration of, the sum of one dollar to the said parties of the first part, in hand, paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, *ha* remised, released, sold, conveyed and quit-claimed, and by these presents do remise, release, sell, convey and quit claim unto the said party of the second part, his heirs and assigns for ever, all the right, title, interest, claim and demand which the said party
1863 of the first part *ha* in and to the following described lots or parcels of land, situate, lying and being in the county of Cook, and State of Illinois, to wit: That part of township thirty-nine

(39), section twenty-two (22), north, range fourteen (14) east of the third principal meridian, fronting on State street, two hundred and sixty-seven (267) feet, lying between the lands owned by the heirs of Susannah Drake on the north, and James D. Sherman on the south, and running east though to Lake Michigan, excepting two hundred and sixty-seven (267) feet fronting on Michigan avenue, and running west equi-distant to Wabash avenue, deeded by Augustus Garrett to R. W. Patterson and Ira M. Weed: also lots No. three (3) and four (4) in block No. thirty (31), O. T. Chicago: also the south twenty (20) feet of lot No. one (1) in said block thirty-one (31), O. T. C.: also the west half of the east half, and the east half of the west half of lot No. seven (7) in block No. thirty-one (31), O. T. C.: also lot No. seven (7), and fractional lot No. two (2) in block No. twenty-one (21), O. T. C., including that part of the original alley in the rear of said lots; also sub-lots one (1), two (2), three (3) and five (5) of Campbell's subdivision of lot No. eight (8) in block No. nine-
1864 teen (19), O. T. C.; also that part of lot No. five in block No. twenty (20), O. T. C., commencing at a point ninety (90) from the corner of Franklin and Lake street, and running thence north on a line with Franklin street thirty-four (34) feet, thence east eighty (80) feet, thence south thirty-four (34) feet, thence west eighty feet to the place of beginning.

To have and to hold the same together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining and all the estate, right, title, interest and claim whatsoever of the said parties of the first part, either in law or equity, to the only proper use, benefit and behoof of the said *part* of the second part, her heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

LETITIA FLAGLOR, [L. S.]
By her attorney in fact, Charles D. Flaglor.
FREDERICK T. FLAGLOR, [L. S.]
By his attorney in fact, Charles D. Flaglor.
CHARLES D. FLAGLOR. [L. S.]

Sealed and delivered in presence of—the word "seven" in the 13th line and the word alley in 20th line from top, interlined before signing. HENRY W. CLARKE.

STATE OF ILLINOIS, } ss.
Cook County. }

1865 I, Henry W. Clarke, a Notary Public in and for said county, in the state aforesaid, do hereby certify that Charles D. Flaglor, for himself and as the attorney in fact of Letitia Flaglor and Frederick T. Flaglor, who is personally known to me to be the same person whose name is subscribed to the annexed deed as said attorney in fact and in his own right as grantor, ap-

peared before me this day in person and acknowledged that he had signed, sealed and delivered the said instrument of writing as his free act and deed for the uses and purposes therein expressed, as said attorney in fact and the grantor.

Given under my hand and official seal, this thirtieth day of May, A. D. 1851.

(Signed.) HENRY W. CLARKE. [L. S.]
Notary Public.

1868 No. 29,929 filed for record 30th May, 1851.

ELIZA GARRETT TO JAMES AND T. G. CROW.

This indenture, made this twenty-ninth day of May, in the year of our Lord one thousand eight hundred and fifty-one, between Eliza Garrett, of the City of Chicago, County of Cook, and State of Illinois, of the first part, and James Crow and Thomas G. Crow, of the same place, parties of the second part:

Witnesseth, that the said party of the first part, for and in consideration of the sum of one dollar to the said party of the first part, in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, *he* remised, released, sold, conveyed, and quit-claimed, and by these presents do remise, release, sell, convey and quit-claim unto the said parties of the second part, their heirs and assigns, forever, all the right, title, interest, claim and demand which the said party of the first part has in and to the following described lots, or parcels of land, situate, lying and being in the County of Cook and State of Illinois, to wit:

1869 That part of lots No. one (1) and two (2) in block No. one hundred and forty (140) in School Section Addition to Chicago, commencing twenty (20) feet seven inches from the corner of State and Adams street, running thence south on a line with State street twenty (20) feet seven inches; thence west seventy-five (75) feet; thence south twenty (20) feet seven inches; thence east seventy-five (75) feet to the place of beginning, including the alley running out to Adams street. Also lots No. fifteen (15) and sixteen (16) in block No. thirteen (13) Fort Dearborn Addition to Chicago. Also that *part part* of lot No. fourteen (14) in said block No. thirteen, Fort Dearborn Add'n, commencing at the northwest corner of said lot and running thence south on a line with State street eight (8) feet; thence east one hundred and fifty feet; thence north eight (8) feet; thence west one hundred and fifty (150) feet to the place of beginning. Also the south twenty (20) feet of said lot No. fourteen (14) in said block No. thirteen (13), Fort Dearborn Addition to Chicago, fronting on State street and running back to the alley one hundred and fifty (150) deep; also that part of lot No. one (1) in block No. seventeen (17) in the O. T. Chicago, commencing at the northeast corner and running thence west on a line with South Water street forty-four (44) feet; thence south

fifty (50) feet; thence east forty-four (44) feet; thence south on a line
1870 with Dearborn street fifty feet to the place of beginning; also the east forty-four (44) feet of the wharfing lot No. five, O. T. Chicago; also, lots No. eleven (11) and fifteen (15) in Wabansia addition to Chicago; (also the west half of lot No. six, in block No. twenty-one (21), O. T. Chicago); also the east half of the west half of lot No. eight (8) and the east three-quarters of fractional lot No. one (1) in said block No. twenty-one (21), original town of Chicago, including the original alley (now vacated by the city), in the rear of said lots; also lots No. one (1) in block No. thirty-one (31) in the Original Town of Chicago, excepting the south twenty (20) of said lot.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining; and all the estate, right, title, interest and claim whatsoever, of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said parties of the second part, their heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set her hand and seal, the day and year first above written.

ELIZA GARRETT.

Signed, sealed and delivered in presence of
[Signed.] HENRY W. CLARKE.

1874 FLAGLORS TO CROWS.

This indenture, made this twenty-ninth day of May, in the year of our Lord one thousand eight hundred and fifty-one, between Letitia Flaglor and Frederick T. Flaglor, by their attorney, Charles D. Flaglor, and Charles D. Flaglor for himself, all of the town of Newburgh, County of Orange and State of New York, parties of the first part, and James Crow and Thomas G. Crow, of the city of Chicago, County of Cook and State of Illinois, parties of the second part, witnesseth, that the said parties of the first part, for and in consideration of one dollar, in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have remised, released, sold, conveyed and quit claimed, and by these presents do remise, release, sell, convey and quit claim unto the said parties of the second part, their heirs and assigns forever, all the following described lots or parcels of land situate, lying and being in the city of Chicago, county of Cook and State of Illinois,
1875 and known and described as follows, to wit: That part of lots one (1) and two (2) in block No. one hundred and forty (140), School Section Addition to Chicago, commencing twenty (20) feet seven inches from the corner of State and Adams street, running thence south on a line with State street twenty (20) feet seven inches, thence west seventy-five (75) feet, thence north twenty (20) feet seven inches, thence east seventy five (75) feet to the place of beginning. Also lot No. fifteen (15) and sixteen (16) in block fifteen

(15), Fort Dearborn addition to Chicago, also the south twenty (20) feet of lot No. fourteen (14) in block No. thirteen (13), Fort Dearborn addition, fronting on State street twenty (20) feet and running back to the alley one hundred and fifty (150) feet deep, also that part of said lot No. fourteen (14) in block No. thirteen (13) Fort Dearborn addition, commencing at the northwest corner of said lot and running south on State street eight (8) feet, thence east one hundred and fifty (150) feet, thence north eight (8) feet, thence west one hundred and fifty (150) feet to the place of beginning. Also that part of lot one (1) in block seventeen (17) O. T. C., commencing at the northeast corner of said lot, running west on a line with South Water street forty-four (44) feet,
1876 thence south fifty (50) feet, thence east forty-four feet (44), thence north on a line with Dearborn street, fifty (50) feet to the place of beginning; also the east forty-four feet of wharfing lot No. five (5); also lot one (1) in block thirty-one (31), O. T. C., excepting the south twenty (20) feet of said lot; also the west half of lot No. six (6) in block twenty-one (21), O. T. C.; also the east half of the west half of lot No. eight (8), and the east three-quarters of fractional lot one (1), in block twenty-one (21), including the original alley running through said lots. Also, lot No. eleven (11) and fifteen (15), in Wabansia addition to Chicago. Also, that part of lots one (1) and two (2), in block No. one hundred and forty (140), School Section, commencing seventy-one (71) feet from the corner of State and Adams streets, running thence west on Adams street four (4) feet, thence south forty one (41) feet two (2) inches, thence east four (4) feet, thence north forty-one (41) feet two (2) inches, to the place of beginning, together with all our right, title and interest, of whatsoever kind, in all annuities due, or may hereafter become due, to us or either of us, parties of the first part, by virtue of any of the provisions contained in the last will of Augustus Garrett, deceased. To have and to hold the same, together with all and singular the
1877 appurtenances and privileges thereunto belonging, or in anywise appertaining, and all the estate, right, title, interest and claim whatsoever of the said *part* of the first part, either in law or equity, to the only proper use, benefit and behoof of the said *part* of the second part, heirs and assigns forever. And the said parties of the first part, for their heirs, executors and administrators, do covenant and agree to and with the said *part* of the second part, his heirs and assigns, that he will warrant and forever defend the aforesaid premises to be free and clear of all claim or claims of any and every person or persons claiming, or to claim, by, through, or under them, and none other.

In witness whereof, the said parties of the first part have here-

unto set their hands and seals the day and year first above written.

(Signed) LETITIA FLAGLOR, [L. S.]
By her attorney in fact, Charles D. Flaglor.
(Signed) FREDERICK T. FLAGLOR, [L. S.]
By his attorney in fact, Charles D. Flaglor.
CHARLES D. FLAGLOR. [L. S.]

Signed, sealed and delivered in presence of
(Signed) H. W. CLARKE.

STATE OF ILLINOIS, } ss.
Cook County. }

I, Henry W. Clarke, a Notary Public in and for said county, in the State aforesaid, do hereby certify that
1878 Charles D. Flaglor, for himself, and as the attorney in fact of *Latitia* Flaglor and Frederick T. Flaglor, who is personally known to me to be the same person whose name is subscribed to the annexed deed as said attorney in fact, and in his own right as grantor, appeared before me this day in person, and acknowledged that he had signed, sealed and delivered the said instrument of writing as the free act and deed, for the uses and purposes therein expressed, as said attorney in fact and grantor.

Given under my hand and official seal this thirtieth day of May, A. D. 1851.

[L. S.] (Signed) HENRY W. CLARKE,
Notary Public.

No. 29,932. Filed for record 30th May, 1851.

1882 ELIZA GARRETT TO L. & C. D. FLAGLOR.

This indenture, made this twenty-ninth day of May, in the year of our Lord one thousand eight hundred and fifty-one, between Eliza Garrett, of the city of Chicago, county of Cook and State of Illinois, party of the first part, and Letitia Flaglor, wife of Frederick T. Flaglor, and Charles D. Flaglor, of the town of Newburgh, county of Orange and State of New York, of the second part, Witnesseth: That the said *part* of the first part for and in consideration of the sum of one dollar to the said party of the first part in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, *ha* remised, released, sold, conveyed and quit-claimed, and by these presents do remise, release, sell, convey and quit-claim unto the said parties of the second part, their heirs and assigns, forever, all the right, title, interest, claim and demand which the said party of the first part has in and to the following described lots or parcels of land, situate, lying and being in the county of Cook and State of Illinois, to wit:

1883 The north half of block No. seventy-three (73) school section addition to Chicago, also lot No. twenty five (25) in block No. 9, in Fort Dearborn addition to Chicago; also the west half of the east half of lot No. two (2) in block No. thirty-one (31) O. T. Chicago; also the west quarter of lot No. eight (8) and the west

quarter of fractional lot No. one (1) in block No. twenty-one (21) O. T. C., including that part of the original alley lying between said lots; also that part of lot No. one in block No. eighteen (18) O. T. Chicago, commencing twenty-two (22) feet from the corner of Clark and South Water streets and running thence west on a line with South Water street, twenty feet, thence and out seventy (70) feet, thence east twenty (20) feet, thence north seventy (70) feet to the place of beginning; also that part of lot No. fourteen (14) in block No. thirteen (13) Fort Dearborn addition to Chicago, commencing twenty (20) feet north of the northwest corner of said lot, running thence north on a line with State street twenty (20) feet, thence east *and* hundred and fifty (150) feet, thence south twenty (20) feet, thence west one hundred and fifty (150) feet to the place of beginning.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise
1884 thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said *part* of the second part, their heirs and assigns forever.

In witness whereof the said *part* of the first part have hereunto set her hand and seal the day and year first above written.

ELIZA GARRETT. [Seal.]

Sealed and delivered in presence of—the words "wife of" in 4th line from top and the words "(20) feet" in 20th line from top interlined, and all the writing in the description part after the word "beginning" in the 23rd line from top erased before signing.

HENRY W. CLARKE.

STATE OF ILLINOIS, }
County of Cook, } *ss.*

I, Henry W. Clarke, a notary public in and for the said county, in the State aforesaid, do hereby certify that Eliza Garrett, who is personally known to me as the person whose name is subscribed to
1885 the annexed deed appeared before me this day in person and acknowledged that she signed, sealed and delivered the said instrument of writing as her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this thirteenth day of May, A. D., 1851.

[L. S.] HENRY W. CLARKE,
Notary Public.

No. 29927. Filed for record 30th May, 1851.

1888 T. G. AND J. CROWS TO C. D. AND L. FLAGLOR.

This indenture, made this twenty-ninth day of May, in the year of our Lord, one thousand eight hundred and fifty-one, between Thomas G. Crow and Mary Louisa, his wife, and James Crow and Sarah A., his wife, of the city of Chicago, county of Cook, and

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State of Illinois, parties of the first part, and Charles D. Flaglor, of Newburgh, county of Orange, and State of New York, parties of the second part, Witnesseth: That the said parties of the first part, for and in consideration of one dollar in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have remised, released, sold, conveyed and quit-claimed, and by these presents do remise, release, sell and convey and quit-claim unto the said party of the second part, their heirs and assigns forever, all the following described lot or parcel of land, situate, lying and being in Chicago, county of Cook aforesaid, and known and described as follows, to wit:

The north half of block No. seventy-three (73) School Section addition to Chicago; also lot No. twenty-five (25) in block No. nine
1889 (9) in Fort Dearborn addition to Chicago; also the west half of the east half of lot No. two (2) in block No. thirty-one (31) original town of Chicago; also the west quarter of fractional lot No. one (1) in block number twenty-one (21) O T. C., including that part of the original alley running between said lots; also that part of lot No. one (1) in block No. eighteen (18) original town of Chicago, commencing twenty-two (22) feet from the corner of Clark street and South Water street, and running thence west on a line with South Water street twenty (20) feet, thence south seventy (70) feet, thence east twenty (20) feet, thence north seventy (70) feet to the place of beginning. Also that part of lot number fourteen (14) in block No. thirteen (13) Fort Dearborn addition to Chicago, commencing twenty (20) north of the southwest corner of said lot running thence north on State street twenty feet (20) thence east one hundred and fifty (150) feet, thence south twenty (20) thence west one hundred and fifty (150) feet to the place of beginning. The said parties of the first part hereby convey and transfer to the said parties of the second part all reversionary interest they may have in and to the above described premises under and by virtue of the will of the late Augustus Garrett deceased.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in any wise appertaining, and all the estate, right, title, interest and claim what-
1890 soever of the said parties of the first part, either in law or equity, to the only proper use, benefit and behoof of the said parties of the second part, their heirs and assigns forever. And the said parties of the first part, for themselves, their heirs, executors and administrators, do covenant and agree to and with the said parties of the second part, their heirs and assigns, that they will warrant and forever defend the aforesaid premises to be free and clear of all claim or claims of any and every person or persons claiming, or to claim by, through or under them, and none other.

In witness whereof the said parties of the first part have here-

16-668

OFFICE SUPREME COURT U. S.
FILED
JAN 8 1883
JAMES H. McKENNEY, Clerk.

No...... *Agenda No.*.....

IN THE

Supreme Court of the United States.

OCTOBER TERM. A. D. 1882.

THE COUNTY OF KANKAKEE,
Plaintiff in Error,
vs.
THE ÆTNA LIFE INSURANCE CO.,
Defendant in Error.

Error to U. S. Circuit Court for Northern District of Illinois. — No. 1146.

BRIEF FOR DEFENDANT IN ERROR.

BAILEY & SEDGWICK,
Attorneys for Defendant in Error.
O. J. Bailey, James H. Sedgwick, Counsel

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BRIEF FOR DEFENDANT IN ERROR.

In reply to Mr. Kale's brief for plaintiff in error, we remark:

In order to make the first point, "That there was a total want of authority to issue the bonds and coupons in question," counsel press the rule, "*Inclusio unius est exclusio alterius*," into a service never contemplated by the authorities. This rule, as applied to the case at bar, may be thus stated: Where a statute confers a new authority or power on a municipal corporation, and also points out the only mode of exercising that power, no other mode can be followed. *Wells* vs. *Supervisors*, 102 U. S., 625, so much relied upon by

counsel for plaintiff in error, goes no farther than this. Since there was nothing in the general law or policy of the State of Mississippi empowering counties to borrow money or issue bonds to pay their obligations, but by that law and policy they had to meet current liabilities by current taxation, and since the charter in question expressly pointed out the mode by taxation by which the subscriptions which it for the first time authorized were to be paid by counties, this court held that no other mode, as by issuing bonds, could be pursued.

But the case at bar now is far different. Under the general law of the State of Illinois counties have authority, after vote of the people "for subscription," to subscribe for stock in railroads and issue county bonds in payment of such subscription, or to get money to pay the same.

See Sec. 2, Act of Nov. 6, 1849, supplemental to an act entitled, An act to provide for a general system of railroad incorporations. Laws of 1849 (2d Sess.), p. 33; copied in brief of plaintiff in error.

The bonds of Kankakee County, to which the coupons now in question were attached, were issued, as recited therein, "under and pursuant to orders of the Board of Supervisors of Kankakee County, Illinois, for subscription to the capital stock of the Kankakee and Illinois River Railroad Company as authorized by virtue of the laws of the State of Illinois authorizing cities and counties to subscribe capital stock to aid and construct railroads; also in accord-

ance with the provisions of an act of said State of Illinois, entitled 'An act to fund and provide for paying the railroad debts of counties, townships, cities and towns, in force April 16, 1869.'" See page 7 of Abstract.

The Kankakee and Illinois River Railroad Company was organized under a special charter conferring authority on townships, corporate towns and cities along its line to subscribe to its stock and issue bonds in payment thereof upon vote of their citizens authorizing the same. Secs. 16 and 17 of this charter are copied in Mr. Kale's brief herein on page 3, and the point is raised that as this special charter omits to expressly confer authority upon counties to subscribe and issue bonds for the capital stock of the road, only saying in that connection, by way of proviso to restrain a possible effect of the enacting clause of the statute, that "nothing herein contained shall prevent counties and cities from taking and voting for subscriptions in the stock of said company under the general laws of this state," therefore counties making such subscriptions have no right to issue bonds to pay them, or to raise money to pay them; and to support the point presses into service the much-abused rule, "*Inclusio unius*," etc. The evident answer to this position is that the charter to the Kankakee and Illinois River Railroad confers no new power upon counties. It simply provides that nothing therein contained shall be construed to prevent them from exercising a power which they already had under the general laws of the state. It refers to all general laws of the state

that would authorize counties and cities to vote and take subscriptions in the capital stock of said company. To say that because it does not repeat all the provisions of the laws referred to, as the provision to pay for such subscriptions by bonds, therefore the provisions not repeated are excluded, is to say that a saving clause must repeat the whole statute which it seeks to save. This is not the law. It is sufficient to refer to it in general terms.

See *Decker* vs. *Hughes*, 68 Ill., p. 33.

But, independent of the authority conferred in the act of 1849 to issue bonds to pay railroad subscriptions, it was at the time of the issuing of the bonds in question, 1870, the undoubted rule and policy in Illinois that every corporation, municipal or private, had "the undeniable and inherent right to pay its debts or provide for their payment—to fund them if that be deemed the best policy and issue the necessary evidences therefor. * * * To provide for their payment in such mode as they and the holders of the indebtedness may agree upon."

City of Galena vs. *Corwith*, 48 Ill., 424, decided in 1868; cited and followed since in *Smith* vs. *Peoria County*, 59 Ill., 424; *Bissell* vs. *City of Kankakee*, 64 Ill., 250; *Burr* vs. *City of Carbondale*, 74 Ill., 474; *Law* vs. *People*, 87 Ill., 410.

It is true that after the issue of these bonds in 1876, in *County of Hardin* vs. *McFarlan*, 82 Ill., 138, a divided court confined the authority of that case to incorporations whose charters expressly granted the

power to issue interest bearing obligations, and said that counties had no such power except where expressly conferred; but this decision cannot affect the bonds and coupons in this case, which were issued while *Galena* vs. *Corwith* stood in full force and unmodified. The broad doctrine of that case is undoubtedly right. As early as 1860 the Supreme Court of Illinois had said: "Counties have no right to procure all the benefits of an act which they are authorized to perform," (to make a subscription to the capital stock of a railroad, for instance,) "recognized and acted upon by them as legal, and then escape liability any more than private individuals. They must respond to their legal engagements to the same extent as individuals."

Johnson vs. *County of Stark*, 24 Ill., 90.

And since then it has been held generally that where an obligation becomes fixed under existing laws, the county or city bound has a kind of inherent power to issue bonds to liquidate or fund it.

See *Chinquy* vs. *People*, 78 Ill., 576;
Barrett vs. *City of E. St. Louis*, 89 Ill., 175.

And that is undoubtedly the doctrine of this court as announced in *Lynd* vs. *The County*, 16 Wall., 6; also in *Seybert* vs. *City of Pittsburgh*, 1 Wall., 272.

Township-organized counties in Illinois have general power under the township organization law, "to make such contracts * * as may be necessary to the exercise of their corporate or administrative pow-

ers." Laws of Illinois, 1861, Art. 13, Sec. 1, page 235. This alone gives power to such counties to issue bonds to pay county obligations when necessary or expedient. Kankakee County is such a county.

The only natural limitation to the doctrine is where the legislature has clearly indicated in any case that the *only* way by which the county obligation is to be met is by taxation. In the case at bar at the time these bonds were issued, the general policy of the State of Illinois, as announced by its Supreme Court, was that counties had to respond to their legal engagements to the same extent as individuals; that municipal corporations had the inherent right to issue bonds to pay their debts if thought best. In addition to this, and specially as to debts created by subscriptions to the capital stock of railroads, the law of 1849, as amended by the Act of March 1, 1854, gave express authority to issue bonds in payment. All these laws were saved by the proviso in Sec. 17 of the charter of the Kankakee and Illinois River Railroad Company, in force April 15, 1869, if they needed any salvation; so that the County of Kankakee clearly had the authority of law for issuing these bonds.

Though there has been no judicial decision by the appellate tribunal of the state upon the precise statute, yet if there have been decisions in kindred cases involving the same principle, the United States Supreme Court will adopt them as part of the law of the contract.

Town of Queensburg vs. *Culver*, 19 Wall., 90.

Next, were they issued by the proper county authorities as designated by law? By the law of 1849 this duty was devolved upon the judges of the County Court. In *Prettyman* vs. *Tazewell County*, 19 Ill., 406, and other cases, this was construed to mean the Board of Supervisors in counties adopting township organization law. It was said that for the transaction of county business in such counties, this board succeeded to all the powers of the County Judges, the County Court and the old County Commissioners Court.

See *Prettyman* vs. *Supervisors Tazewell Co.*, 19 Ill., 406;
People vs. *Thurber*, 13 Ill., 554;
Green vs. *Wardwell*, 17 Ill., 278;
Gillett vs. *Logan Co.*, 67 Ill., 256.

This was the settled construction of courts and lawyers, that wherever the legislature mentioned any of these other bodies, it intended the Board of Supervisors in counties under township organization. It will, therefore, be presumed that when in 1854 the legislature passed a general act operating to some extent as an amendment of the law of 1849, referring to that law in terms, continuing some of its provisions, but modifying another (as to the delivering of county bonds, though all the stockholders should not have been regularly assessed). It was the intention in using the term, "judges of such county," to use it in the same sense and with the same construction that the highest court of the state had already put upon it. In using language which has received a settled judicial

construction, the legislature adopts that construction. This is a well established principle of law and common sense. An amendatory act becomes a part of the original act, and its words and phrases must receive the same construction as in the other sections of the original act.

The case in *Gaddis* vs. *Richland County*, 92 Ill., 119. was different. The Supreme Court of Illinois was not construing this act of 1854 in that case. It was construing the special charter of a railroad. The intention of the legislature in using the language they did in that special act may have been as indicated in that decision, but it does not follow that the legislature in passing this general amendatory act of 1854, with another evident aim, intended to re-transfer to all County Courts, even in counties having a Board of Supervisors to do their county business, powers and duties which the Supreme Court had so often declared properly belonged, *ex-officio*, to the Boards of Supervisors. Had the legislature intended so sweeping a change of policy, it would have made its intention clear and beyond doubt.

But suppose, for the sake of the argument, that the legislature, by this law of 1854, intended to and did re-transfer all this railroad subscription business in every county in the state, whether under township organization or not, to the County Court. In 1861 the legislature again revise and re-enact the whole township organization law, and again declare that Boards of Supervisors in counties under township organization should have power to perform all duties, not incon-

sistent with that act, which were enjoined upon County Courts when holding terms for the transaction of county business in those counties not adopting township organization.

See Sess. Laws 1861 of Illinois, p. 237, Art. 14, Sec. 6, Clause 8.

Now County Courts in counties not adopting organization had, by the suppositions all around, at the time of the passage of this act of 1861, all the powers and duties touching these railroad subscriptions and bonds. Therefore the law of 1861 transferred all those powers and duties to Boards of Supervisors in counties under township organization whether the law of 1854 had taken them away or not. Or, rather, if the law of 1854 had taken them away the law of 1861 gave them back again to the boards. We do not, therefore, choose to take issue with counsel when he says: "The latter statute will prevail." And though we may think that he is astray when he argues that the effect of the act of 1854 was to transfer to County Courts, in township-organized counties, jurisdiction over the issue of railroad subscription bonds, we think the legislature intended no such effect, but in using the language they did took it for granted that the settled construction thereof by the Supreme Court of the state would apply. Yet we agree that in counties *not* under township organization the County Courts had jurisdiction of such powers and duties. All of which the law of 1861 settled beyond dispute in the Boards of Supervisors of all counties under township

organization. And as our bonds in this case were not issued until 1870 they were issued by the proper authority.

There are no questions of irregularity in the calling and conducting of the election, or issue of the bonds, that need to detain us further. We are admitted innocent holders for value. The recitals on the bonds, the payment of interest for a long term of years without apparent objection, now estop the county from raising any question over them that does not go to the validity of the bonds. Since the defense of want of authority in the county to issue them, or the other defense that they were not issued by the proper county authorities, are not, in our view of the case, tenable, we will not advert to the well-established holdings of this court concerning our rights as innocent holders, as we deem such mention unnecessary.

BAILEY & SEDGWICK,
Attorneys for Defendant in Error.

O. J. Bailey, James H. Sedgwick, Counsel